



# **Review Body on Senior Salaries**

**REPORT No. 66**

## **Review of Tribunals’ Judiciary Remuneration 2008**

***Chairman: Bill Cockburn, CBE TD***

*Presented to the Lord Chancellor and  
Secretary of State for Justice*

*November 2008*



# Foreword

## Review Body on Senior Salaries

The Review Body on Top Salaries (TSRB) was appointed in May 1971 and renamed the Review Body on Senior Salaries (SSRB) in July 1993, with revised terms of reference. The terms of reference were revised again in 1998 as a consequence of the government's Comprehensive Spending Review, in 2001 to allow the devolved bodies direct access to the Review Body's advice and in 2007 to add certain NHS managers to the remit.

The terms of reference are:

*The Review Body on Senior Salaries provides independent advice to the Prime Minister, the Lord Chancellor, the Secretary of State for Defence and the Secretary of State for Health on the remuneration of holders of judicial office; senior civil servants; senior officers of the armed forces; very senior managers in the NHS; and other such public appointments as may from time to time be specified.*

*The Review Body also advises the Prime Minister from time to time on the pay and pensions of Members of Parliament and their allowances; on Peers' allowances; and on the pay, pensions and allowances of Ministers and others whose pay is determined by the Ministerial and Other Salaries Act 1975. If asked to do so by the Presiding Officer and the First Minister of the Scottish Parliament jointly; or by the Speaker of the Northern Ireland Assembly; or by the Presiding Officer of the National Assembly for Wales; or by the Mayor of London and the Chair of the Greater London Assembly jointly; the Review Body also from time to time advises those bodies on the pay, pensions and allowances of their members and office holders.*

*In reaching its recommendations, the Review Body is to have regard to the following considerations:*

*the need to recruit, retain and motivate suitably able and qualified people to exercise their different responsibilities;*

*regional/local variations in labour markets and their effects on the recruitment and retention of staff;*

*Government policies for improving the public services including the requirement on departments to meet the output targets for the delivery of departmental services;*

*the funds available to departments as set out in the Government's departmental expenditure limits;*

*the Government's inflation target.*

*In making recommendations, the Review Body shall consider any factors that the Government and other witnesses may draw to its attention. In particular it shall have regard to:*

*differences in terms and conditions of employment between the public and private sector and between the remit groups, taking account of relative job security and the value of benefits in kind;*

*changes in national pay systems, including flexibility and the reward of success; and job weight in differentiating the remuneration of particular posts;*

*the need to maintain broad linkage between the remuneration of the three main remit groups, while allowing sufficient flexibility to take account of the circumstances of each group; and*

*the relevant legal obligations, including anti-discrimination legislation regarding age, gender, race, sexual orientation, religion and belief and disability.*

*The Review Body may make other recommendations as it sees fit:*

*to ensure that, as appropriate, the remuneration of the remit groups relates coherently to that of their subordinates, encourages efficiency and effectiveness, and takes account of the different management and organisational structures that may be in place from time to time;*

*to relate reward to performance where appropriate;*

*to maintain the confidence of those covered by the Review Body's remit that its recommendations have been properly and fairly determined; and*

*to ensure that the remuneration of those covered by the remit is consistent with the Government's equal opportunities policy.*

*The Review Body will take account of the evidence it receives about wider economic considerations and the affordability of its recommendations.*

Members of the Review Body are:

Sir John Baker, CBE *Chairman* (until 31 March 2008)

Bill Cockburn, CBE, TD *Chairman* (from 1 April 2008)

Mark Baker, CBE

Mary Galbraith

Professor David Greenaway

Mei Sim Lai, OBE, DL

Mike Langley\*

Jim McKenna\*

Sir Peter North, CBE, QC\*

Richard Pearson\*

Paul Williams

The Secretariat is provided by the Office of Manpower Economics.

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\* Members of the Judicial Sub-committee, chaired by Sir Peter North

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## Summary and recommendations

1. At the request of what is now the Ministry of Justice, we have carried out an independent review of the tribunals' judiciary remuneration. The trigger for the review is the bringing together of over 30 different tribunals – with different terms and conditions – in the Tribunals Service. The aim of the review is to propose a pay structure for the new structure of the tribunals' judiciary, after implementation of the *Tribunals, Courts and Enforcement Act 2007*, including appropriate judicial salary groups for salaried office holders, and fee levels and formulae for determining fee levels for fee-paid judicial (legal, other professional and lay) office holders.

2. Our Terms of Reference cover the whole of the unified tribunals' structure within the Tribunals Service. The Tribunals Service consists of three pillars: the Employment Appeal Tribunal/Employment Tribunals; the Asylum and Immigration Tribunal; and a third pillar, which will eventually comprise the administrative, lands and tax tribunals. The latter is sub-divided into chambers. All three pillars contain two levels: first instance and appellate. In the third pillar these levels are known as the First-tier and Upper Tribunal. The intention is that two of the pillars will be merged into a single structure (although the Employment Appeal Tribunal and Employment Tribunals will remain as a separate pillar) and we have designed our proposals for the pay system with this in mind.

3. The Competition Appeal Tribunal is outside the Tribunals Service. Its parent body is now the Department for Business, Enterprise and Regulatory Reform, and it has been included in this review at the Department's request as it seeks a link to the pay system for judges within the Tribunals Service.

4. To help us undertake this review, we engaged consultants, PricewaterhouseCoopers, to carry out a job evaluation of the various roles of the tribunals' judiciary, to examine the existing salary and fee structures of the different tribunals and to make proposals for us to consider, together with the other evidence we received, for a unified structure taking account of planned and likely developments in the organisation of tribunals. We undertook two separate

consultations in April and October 2007: one seeking preliminary views on the review; and the other seeking views on the report prepared by PricewaterhouseCoopers. We also took oral evidence from interested parties over two days in the spring of 2008.

5. As the review proceeded, there have been many developments in the proposed structure of the Tribunals Service as well as consultations relating to terms and conditions conducted by the Tribunals Service. Consequently, PricewaterhouseCoopers' findings have had less relevance to our conclusions than we might have expected. This is because the PricewaterhouseCoopers research and job evaluation looked in part at specific posts in the old structure, but we have decided to concentrate on developing a pay structure to match the new organisation of the tribunals, as we currently understand it.

6. During oral evidence, it became clear to us that the Tribunals Service had a transition period of around five years in mind to move across to the new structure. We support such an approach. We have included in this report what we consider should be the future steady state structure, in the form of a pay system to be implemented gradually, over several years. Some existing posts in tribunals will disappear, others will change and some may remain essentially the same. There is a considerable challenge for management of both people and resources in moving from the current to the new structure. The pace of transition will affect the overall cost of the exercise. We have not attempted to define how that transition should be achieved, nor have we tried to map existing posts onto the new structure. That is the responsibility of the Tribunals Service which must balance its objectives and constraints; though we have been kept informed by the Tribunals Service of its thinking in relation to the mapping of posts.

7. We have designed a pay structure for the projected organisation of the tribunals which we believe is reasonable and coherent with appropriate sub-divisions. Our objective has been to provide a unified pay structure which brings together all the disparate groups within the new Tribunals Service and facilitates the flexible deployment of judicial office holders across the structure. However, at the time of

writing, some posts have still to be identified and where this is the case we will look at such posts and where they fit into the pay structure as required.

### **Professionally Qualified Members and Expert Members**

8. As well as looking at the position of those in salaried judicial posts, we were asked as part of this review, to consider the appropriate relationship between different types of fee-paid appointments, for example legally qualified, medically qualified, lay member, etc. We have divided the non-legal members into two categories:

Professionally Qualified Members and Expert Members.

9. We define **Professionally Qualified Members** as those whose role requires them to have a professional qualification, for example, medically qualified panel members who are doctors, financially qualified panel members who are accountants, and surveyors. Recently, the government laid an Order<sup>1</sup> to allow people with a wider range of qualifications than hitherto to be members of tribunals. We have therefore sub-divided this category of members into two (Professional A and Professional B) to reflect the level of qualification required.

10. We have called the second category of non-legal members **Expert Members**: these members have expertise in their own field. Paragraphs 3 and 4 of the Order list examples of such members including persons (other than registered medical practitioners) who are experienced in dealing with the physical or mental needs of disabled persons; and persons who have substantial experience of: service in the Armed Forces; or of educational, child care, health, or social care matters; or in an industry, trade or business sector and the matters that are likely to arise as issues in the course of disputes.

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<sup>1</sup> *Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008*. SI 2008/2692. TSO, 2008. Available at: [http://www.opsi.gov.uk/si/si2008/pdf/uksi\\_20082692\\_en.pdf](http://www.opsi.gov.uk/si/si2008/pdf/uksi_20082692_en.pdf) and reproduced in Appendix D of this report.

### **Level of fees**

11. In the following list of recommendations, where a post is allocated to a salary group, the intention is that fee-paid judicial office holders should be paid the daily fee corresponding to that salary group (see Recommendation 11 below).

### **Transition**

12. All our recommendations on the grading of posts in the new structure are intended to be achieved over a transitional period of up to five years.

### **The cost of the pay recommendations**

13. The Tribunals Service is currently in a state of evolution, which will present it with opportunities to make a number of savings. Using the new salaries and fees, and assuming that Professionally Qualified Members will be utilised equally between bands Professional A and Professional B, the proposed new structure would cost approximately an additional **£11.0 million** at current cost, at the end of the transition period of up to five years, taking no account of any other savings from the transition. This would be an increase of **£2.2 million a year** for each of five years at current prices per year, assuming the total increase is spread evenly over the transition period. Some of these costs will be offset by a reduced number of posts due to cross-ticketing and further consideration as to what posts are required within each tribunal, including how many management posts are considered necessary, as tribunals are brought into the new structure. Other potential savings include the centralisation of tribunal accommodation and the introduction of a wider range of potential members as envisaged by the *Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008*.

## List of recommendations

*The order of the recommendations below reflects the order in which they appear in the text.*

### Upper Tribunal

**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*.<sup>2</sup>

- 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.

### First-tier Tribunal

**Recommendation 2:** we recommend 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;

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<sup>2</sup> Review Body on Senior Salaries. *Report on senior salaries*. TSO [annual]

- 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.

### **Asylum and Immigration Tribunal**

**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 Members – a proportion of the rate for salary group 7;
- Special Immigration Appeals Commission Judges – salary group 6.1; and
- Special Immigration Appeals Commission Expert Members – salary group 7.

### **Employment Appeal Tribunal and Employment Tribunals**

**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; and
- 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.

### **Salaries and fees**

**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 the rate for Expert Members sitting in the First-tier Tribunal (and the equivalent in the Asylum and Immigration Tribunal and Employment Tribunals) should be 60 per cent of the daily fee equivalent to salary group 7.

**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.

**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.

**Recommendation 12:** we recommend that, in circumstances where recruitment or 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.

**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.

### **Transitional arrangements**

**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.

**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.

**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.

### **The Competition Appeal Tribunal**

**Recommendation 18:** we recommend that the remuneration for the Competition Appeal Tribunal should be based on that for an 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.



## CHAPTER 1: INTRODUCTION AND CONTEXT OF THE REVIEW

### Introduction

1.1 At the request of what is now the Ministry of Justice, we have carried out an independent review of the tribunals' judiciary remuneration. The trigger for this review is the bringing together of over 30 different tribunals – with different terms and conditions – in the Tribunals Service. The aim of the review is to propose a pay structure for the new structure of the tribunals' judiciary, after implementation of the *Tribunals, Courts and Enforcement Act 2007*, including appropriate judicial salary groups for salaried office holders, and fee levels and formulae for determining future fee levels for fee-paid judicial (legal, other professional and lay) office holders.

1.2 This is only the second time that we have looked at remuneration for fee-paid judicial office holders. We previously looked at fee levels for judicial office holders in our Twenty-First Report in 1999.<sup>3</sup> The last major review of the judiciary, which included salaried judicial office holders working in tribunals, took place in 2005-06.<sup>4</sup>

### Terms of Reference

1.3 The Terms of Reference for the review were outlined in a minute from the then Chief Executive of the Tribunals Service. The main points are listed in Table 1.1 below, and the full commissioning minute can be found in Appendix A.

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<sup>3</sup> Review Body on Senior Salaries. *Twenty-first report on senior salaries*. (Cm 4245) The Stationery Office, 1999: Chapter 5.

<sup>4</sup> Review Body on Senior Salaries. *Twenty-eighth report on senior salaries*. (Cm 6727) TSO, 2006: Chapter 4. Available at:  
<http://www.ome.uk.com/downloads/28th%20Report%20on%20Senior%20Salaries%20-%202006.pdf>

## Table 1.1: Terms of Reference for the review

To propose a pay structure for the tribunals judiciary after implementation of the Tribunals, Courts and Enforcements Bill, including fee levels, and formulae for determining future fee levels, for each of the salaried and fee-paid offices (legal, non-legal professional and lay), having regard to:-

- the appropriate relationship between salaries and fees (including the continuing applicability of the 220 divisor for determining daily fees for legal members or whether a completely different system of payment should be introduced at least as an alternative option, e.g. per hour, per case);
- the appropriate relationship between different types of fee paid appointments, for example legally qualified, medically qualified, lay member etc;
- the need for a coherent approach to the definition of what constitutes a payable period e.g. per day, per hour etc; and whether payment for preparation time; reading; and/or time spent writing up judgements should be inclusive or separate;
- the relationships between the different Tribunal tiers, chambers and jurisdictions;
- the remuneration of those who will sit in more than one chamber or jurisdiction whether or not they are legally qualified;
- the expectation that non-legal members will be organised in cross jurisdictional panels based on their type of expertise;
- a greater judicial management/team leadership role for some salaried judges: supervising legal staff in the Upper Tribunal (UT), regional/ area managers in the First-tier Tribunal, case management e.g. deciding appropriate panel composition;
- the new role of chamber Presidents;
- whether remuneration should be based entirely on job weight, or whether adjustments should be made in response to market forces;
- all other relevant factors including the financial constraints under which this exercise is being carried out.

In the process to make any recommendations for interim fee levels under the existing Tribunal system, prior to the implementation of the new Tribunal structure.

### *Particular issues on which SSRB advice is sought*

There are difficulties with recruitment of medical members in all tribunals where they are required. SSRB are invited to look at the issues raised above and provide options which would facilitate recruitment and retention of medical members.

There are potential issues with the across the board implementation of differential fees for different types of fee paid office holders, for example CICAP where all panel members (whether legally qualified, medically qualified or lay) currently receive the same fee. It would be helpful if any proposed differential treatment of different types of office holder was fully justified. If the Review Body believes that such differentiation would normally be justified, is there any case for exceptions to this general principle, for example at CICAP or elsewhere?

1.4 Our Terms of Reference cover the whole of the unified tribunals' structure within the Tribunals Service. The Tribunals Service consists of three pillars: the Employment Appeal Tribunal/Employment Tribunals, the Asylum and Immigration Tribunal and a third pillar, which will eventually comprise the administrative, lands and tax tribunals. The latter is sub-divided into chambers. All three pillars contain two levels: first instance and appellate. In the third pillar these levels are known as the First-tier and Upper Tribunal. The intention is that two of the pillars will be merged into a single structure (although the Employment Appeal Tribunal and Employment Tribunals will remain as a separate pillar) and we have designed our proposals for the pay system with this in mind.

1.5 The Competition Appeal Tribunal is outside the Tribunals Service. Its parent body is now the Department for Business, Enterprise and Regulatory Reform, and it has been included in this review at the Department's request as it seeks a link to the pay system for judges within the Tribunals Service.

### **Evidence gathering**

1.6 As a first stage in this review, we issued a letter in April 2007<sup>5</sup> inviting all those with an interest to send their preliminary views. We received 169 responses<sup>6</sup> to that first round of consultation. Many of the points raised by respondents related not to pay but to aspects of terms and conditions which the Tribunals Service has been reviewing separately and in parallel with this review. Any comments relevant to the review being carried out by the Tribunals Service were passed to them and vice versa.

1.7 To help us undertake this review, we engaged consultants, PricewaterhouseCoopers, to carry out a job evaluation of the various roles of the tribunals' judiciary, to examine the existing salary and fee structures of the different tribunals, and related issues, and to make proposals for us to consider, together with

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<sup>5</sup> Letter from Sir Peter North to all members of the Tribunals' Judiciary, dated 23 April 2007. Available at: <http://www.ome.uk.com/review.cfm?body=4>

<sup>6</sup> A summary of the responses to the first consultation can be found in: Review Body on Senior Salaries. Judicial Sub-committee. *Review of tribunals' judiciary remuneration: consultation document*. 19 October 2007: Appendix A. Available at: <http://www.ome.uk.com/downloads/Full%20consultation.pdf>

the other evidence we received, for a unified structure taking account of planned and likely developments in the organisation of tribunals.

1.8 PricewaterhouseCoopers conducted a job evaluation study between May and September 2007 of the then current tribunals' judiciary, using the job evaluation methodology that it had used for the major review of the salaried judiciary in 2005,<sup>7</sup> with adaptations where necessary to reflect the work of the tribunals' judiciary. PricewaterhouseCoopers carried out 128 evaluations of jobs within the tribunals' judiciary, covering 83 different judicial offices in 23 tribunals. As part of the job evaluation process, it gave interviewees the opportunity to comment on their job summaries and to obtain copies of their scores, and a number did so. Finally, in terms of considering the sample representation, PricewaterhouseCoopers took into account information from the 2005 review when reaching conclusions for the 2007 review and found that their 2007 results were consistent with those for the major review in 2005.

1.9 We issued the PricewaterhouseCoopers report for a three-month consultation in October 2007. The consultation sought views: on PricewaterhouseCoopers' proposals regarding certain posts held by salaried judicial office holders; on fee rates, transitional arrangements, the 'professional day' and the standard divisor used for calculating the rate for fee-paid judicial office holders; on the remuneration of fee-paid medical members and others with specialist skills; on the office of the Senior President of Tribunals and the Chamber Presidents under the new tribunals system; and any additional relevant observations. We received 84 responses. A summary of those responses is at Appendix B.

1.10 We received written evidence in response to our two consultations from the Tribunals Service and many members of the tribunals' judiciary, either as individuals or as representative bodies. We also held two days of oral evidence in March and April 2008 when we heard from the Senior President of Tribunals, Lord Justice Carnwath, the Tribunals Service and several other representative bodies. A list of all those who provided evidence is at Appendix C.

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<sup>7</sup> Review Body on Senior Salaries. *Twenty-eighth report on senior salaries*. (Cm 6727) TSO, 2006: Chapter 4. Available at: <http://www.ome.uk.com/downloads/28th%20Report%20on%20Senior%20Salaries%20-%202006.pdf>

1.11 We are grateful to all those who have presented evidence to us, for their time and effort spent in the preparation and provision of evidence, both in writing and orally, and for the speed with which our questions and requests for supplementary evidence were handled. In reaching our conclusions, we have considered all the evidence carefully and with an open mind.

### **Parallel consultations**

1.12 Shortly before we issued our consultation based on the PricewaterhouseCoopers report, the Tribunals Service issued a four-week consultation on the terms and conditions of the tribunals' judiciary; although covering separate issues this had some overlap with our own consultation. For example, while the Tribunals Service looked into the length of a working day, fees for attending training, cancellation fees and minimum and maximum sitting days, we considered that preparation and writing-up time fell within our remit, and PricewaterhouseCoopers therefore commented on these latter two items in their report.

1.13 In addition, the government White Paper *Transforming Tribunals*,<sup>8</sup> which sought views on the structure of the Tribunals Service, was issued in the month following our consultation. This meant that over a period of five months, the judiciary in the Tribunals Service had to respond to three different consultations regarding their terms and conditions, pay and organisational structure. We appreciate the time and effort that respondents have given to our consultation. A huge amount of change is underway in the Tribunals Service and it is understandable that some members of the tribunals' judiciary expressed considerable frustration in their responses to our consultation.

### **More recent developments**

1.14 Since our consultation on the PricewaterhouseCoopers' report in autumn 2007, the issues have moved on substantially; for example, the Tribunals Service continues to develop its thinking around the structure and some new job roles have been

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<sup>8</sup> Tribunals Service. *Transforming tribunals: implementing part 1 of the Tribunals, Courts and Enforcement Act 2007*. Ministry of Justice, 28 November 2007. Available at: <http://www.tribunals.gov.uk/Documents/Transforming%20Tribunals.pdf>

defined. Consequently, PricewaterhouseCoopers' findings have had less relevance to our conclusions than we might have expected. This means that, whereas the consultation looked at specific posts in the old structure, we are now looking at the new structure as a whole. Our recommendations are for the new organisational structure of tribunals. We make no recommendations on the grading of posts under the old structure, nor on how such posts should be mapped across to the new structure, since some posts will disappear and others will change substantially as a result of the reorganisation, although the impact on many posts is still uncertain. We recognise that this may be disappointing for those who stood to gain if the recommendations made by PricewaterhouseCoopers had been accepted, or for those who prepared detailed responses to the consultation, although we have still taken careful note of the comments received.

1.15 In response to the consultation, the Tribunals Service told us that it did not now want us to look at the salaried tribunal judiciary until the next major review. However, in our view it is impossible to separate the pay for fee-paid and salaried tribunal members because of the link between them, a link which we believe is essential to provide a fair remuneration system.

1.16 During oral evidence it also became clear that the Tribunals Service had a transition period of around five years in mind. We support such an approach. We have made proposals in this report for what we consider should be the future steady state structure, in the form of a pay system that can be moved to over an extended period; the length of the transition period to be determined ultimately by the Tribunals Service.

1.17 We have designed a pay structure which is reasonable and coherent with appropriate sub-divisions. Our objective here is to provide a unified pay structure which brings together all the disparate groups within the new Tribunals Service and facilitates the flexible deployment of judicial office holders across the structure. However, at the time of writing, some posts have still to be defined and where this is the case we will look at such posts and where they fit into the structure as appropriate.

1.18 In this report we deal in Chapter 2 with the tribunals' structure and the changes affecting the Tribunals Service. In Chapter 3 we make recommendations relating to the Senior and Deputy Senior Presidents of Tribunals and to the Upper Tribunal, and in Chapter 4 we make recommendations relating to the First-tier Tribunal. In Chapters 5 and 6 respectively, we cover the two other pillars within the Tribunals Service: the Asylum and Immigration Tribunal; and the Employment Appeal Tribunal and Employment Tribunals. Chapter 7 contains our detailed recommendations on the new pay structure and salaries and fees and in Chapter 8 we deal with transitional arrangements. Finally, Chapter 9 covers our recommendations for the Competition Appeal Tribunal, which is outside the Tribunals Service but was included in the review at the request of the Department for Business, Enterprise and Regulatory Reform. The Appendices set out the full Terms of Reference, a summary of responses to the consultation on the report by PricewaterhouseCoopers, a list of those who provided evidence and the *Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008*.

1.19 The recommendations in this report relate to the tribunals' judiciary and have no implications for the courts' judiciary at this stage. We will look at court judiciary in the next major review of the judicial pay structure.

## CHAPTER 2: THE TRIBUNALS' STRUCTURE

### Changes affecting the Tribunals Service

2.1 The Tribunals Service is an executive agency of the Ministry of Justice and came into being in April 2006. It brought together tribunals which had previously been administered by a wide range of organisations and had been the responsibility of many different government departments. The result was that, for fee-paid tribunal members, the fees paid by different tribunals differed widely for no apparent reason. Furthermore, the different government departments had taken different approaches to uprating the various fees.

2.2 The *Tribunals, Courts and Enforcement Act 2007* contains provisions for the new judicial and legal framework within the Tribunals Service, including:<sup>9</sup>

- the creation of two new tribunals (the Upper Tribunal and the First-tier Tribunal) into which most existing tribunal jurisdictions will be transferred;
- a new structure of judges and members of both the Upper Tribunal and the First-tier Tribunal, all under a Senior President who is also responsible for the Asylum and Immigration Tribunal and the Employment Appeal Tribunal and Employment Tribunals;
- the creation of judicial chambers with responsibility for a range of related jurisdictions; and
- the flexible deployment of judges and members across jurisdictions (often referred to as 'cross-ticketing').

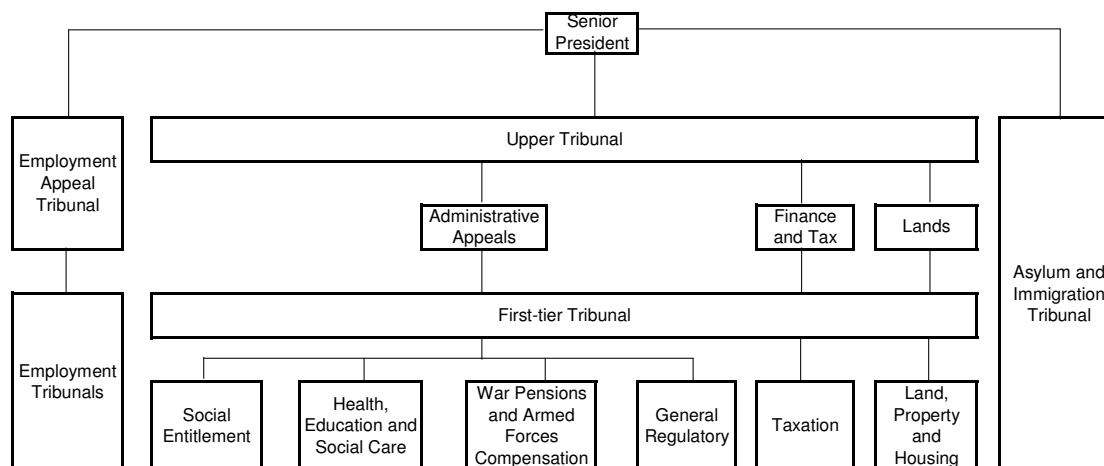
2.3 The *Tribunals, Courts and Enforcement Act 2007* and the government White Paper *Transforming Tribunals* outline the new structure of the unified Tribunals Service. The new tribunals system is headed by the Senior President and Deputy Senior President. There are three pillars: the Employment Appeal Tribunal and Employment Tribunals, the Asylum and Immigration Tribunal and a new third pillar

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<sup>9</sup> Tribunals Service. *Transforming Tribunals: implementing part 1 of the Tribunals, Courts and Enforcement Act 2007*. Ministry of Justice, 28 November 2007: para. 64. Available at: <http://www.tribunals.gov.uk/Documents/Transforming%20Tribunals.pdf>

consisting of an Upper Tribunal and a First-tier Tribunal, each of which is sub-divided into chambers for the various jurisdictions.

**Figure 2.1: Proposed new structure of the unified Tribunals Service**



2.4 The government White Paper *Transforming Tribunals* outlined the proposals for reform and sought views on the structure. The government’s response,<sup>10</sup> which included an analysis of the consultation replies, was published when we were in the final stages of this review.

2.5 In the rest of this chapter we are primarily concerned with the third pillar. We consider the two other pillars in Chapters 5 and 6. The new First-tier and Upper Tribunals were implemented on 3 November 2008 and the transfer of all jurisdictions will follow. There will initially be three chambers in the First-tier Tribunal (Social Entitlement; Health, Education and Social Care; and War Pensions and Armed Forces Compensation) and one in the Upper Tribunal (Administrative Appeals). The other chambers will follow from April 2009.

2.6 We were asked to look at the relationships between the different tribunal tiers, chambers and jurisdictions. We were also asked to advise on the appropriate levels of remuneration for those salaried judges with additional managerial or leadership responsibilities: for example, those supervising legal staff in the Upper Tribunal;

<sup>10</sup> Tribunals Service. *Transforming Tribunals: implementing part 1 of the Tribunals, Courts and Enforcement Act 2007 – the government’s response*. Ministry of Justice, 19 May 2008. Available at: <http://www.justice.gov.uk/docs/cp3007-response.pdf>

regional/area managers in the First-tier Tribunal; or those making decisions on appropriate panel composition. At the time when PricewaterhouseCoopers was carrying out the job evaluation work in autumn 2007, the new structure was still evolving although some of the new posts had been proposed but not yet finalised.

### **Upper Tribunal**

2.7 The authority of the Upper Tribunal derives from its role as the appellate tier of the tribunal system, its judicial review powers, its specialist skills and its status as a superior court of record. The core function is as an appellate body for decisions made by the First-tier tribunal, but we understand that there will also be limited first instance jurisdiction, primarily in finance and tax cases. The Upper Tribunal will comprise the Administrative Appeals chamber, the Finance and Tax chamber and the Lands chamber.

### **First-tier Tribunal<sup>11</sup>**

2.8 Most cases will be handled by the First-tier Tribunal. The Tribunals Service said that it would be the natural starting place for all jurisdictions, with onward appeal to the Upper Tribunal. There will eventually be six chambers in the First-tier Tribunal: Social Entitlement; Health, Education and Social Care; War Pensions and Armed Forces Compensation; General Regulatory; Taxation; and Land, Property and Housing.

### **Salaried judicial office holders<sup>12</sup>**

2.9 Salaried judicial office holders normally work full-time in their role as tribunal judges, though some also sit occasionally in other courts; however, a small proportion are part-time salaried judges. Salaried judicial office holders are appointed to serve on a permanent basis until retirement age. The Tribunals Service told us that there were currently 414 salaried judicial office holders, of whom 410 were legal members

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<sup>11</sup> Tribunals Service. *Transforming tribunals: implementing part 1 of the Tribunals, Courts and Enforcement Act 2007*. Ministry of Justice, 28 November 2007: chapter 7. Available at: [http://www.tribunals.gov.uk/Documents/Transforming %20Tribunals.pdf](http://www.tribunals.gov.uk/Documents/Transforming%20Tribunals.pdf)

<sup>12</sup> Throughout the report we use the term 'judicial office holders' to cover both legally qualified judges and non-legal members who sit on tribunals.

and four non-legal members (one doctor in the Social Security and Child Support Appeals Tribunal and three surveyors in the Lands Tribunal).

### **Fee-paid judicial office holders**

2.10 Fee-paid judicial office holders work part-time in their role as tribunal members. They are generally appointed for five-year terms which are normally subject to automatic renewal in the absence of limited specified grounds (misbehaviour etc) up to retirement age. This group consists of both legal and non-legal members and we note that there is a diverse range of skills and competencies, not related to the fee rates. Virtually all non-legal members are fee-paid. The Tribunals Service told us that there were currently 5,927 fee-paid judicial office holders, of whom 1,820 were legal members and 4,107 non-legal members.

2.11 Due to history and a lack of consistency in the approach taken by different Departments (see Annex C to Appendix A), there is currently a wide disparity in the fee rates for fee-paid judicial office holders, with fees for non-legal members ranging from £171 per day in Employment Tribunals to £329 per day in the Transport Tribunal and Immigration Services Tribunal, and £447 per day for a medically qualified panel member in the Pensions Appeal Tribunal and the Mental Health Review Tribunal. With the exception of medically qualified panel members, we received no evidence to indicate that there is a problem with the recruitment of fee-paid non-legal members at the existing rates (see Annex F to Appendix A).

### **Judges<sup>13</sup>**

2.12 The Senior President will preside over the tribunals covered by the *Tribunals, Courts and Enforcement Act 2007* and will have responsibility for all three pillars. Each chamber in the First-tier and Upper Tribunal will have a president whose role is the maintenance and improvement of the chamber's expertise; all First-tier Chamber Presidents will also be judges of the Upper Tribunal. It will also be possible in smaller chambers for the same judge to be the president of both the Upper and First-

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<sup>13</sup> Tribunals Service. *Transforming Tribunals: implementing part 1 of the Tribunals, Courts and Enforcement Act 2007*. Ministry of Justice, 28 November 2007: chapters 6 – 8. Available at: <http://www.tribunals.gov.uk/Documents/Transforming%20Tribunals.pdf>

tier chamber. In some cases Deputy Chamber Presidents and other judges with management responsibilities will be appointed. Other legally qualified members, salaried or fee-paid will be known as judges of the First-tier/Upper Tribunal. It should also be noted that some judges may sit in both tiers.

### **Non-legal members**

2.13 The role of non-legal members has been reviewed by the Tribunals Service as part of developing the new system. Non-legal members in future may be able to hear some cases alone, as is currently the case in the Lands Tribunal. The government has published the *Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008* which came into force on 3 November 2008 (see Appendix D). The Order lists the bases of eligibility for appointment as non-legal members and allows a wider range of qualified people to be members of tribunals, partly as a means of reducing the difficulties in the recruitment of medically qualified members. Until now medical membership of a tribunal has been limited to doctors, but other groups, including nurses and dentists, will in future be eligible where their expertise is appropriate. However, we understand that the over-riding principle in the future will be that non-legal members, whether medical or otherwise, should be used only when they bring specific knowledge, skills or professional qualifications to the tribunal. When non-legal members are required to hear cases alone, or to act as chairman, we believe that this has implications for pay, and that such members should receive the same pay as legal members (see Chapter 7 and Recommendation 9).

2.14 We were asked to consider the appropriate relationship between different types of fee-paid appointments, for example legally qualified, medically qualified, lay member etc. We have divided the non-legal members into two categories: Professionally Qualified Members and Expert Members.

### ***Professionally Qualified Members***

2.15 We define Professionally Qualified Members as those required to have a professional qualification, for example, medically qualified panel members who are doctors, financially qualified panel members who are accountants, and surveyors. Medically qualified panel members currently sit in the Social Security and Child

Support Appeals Tribunal, Pensions Appeal Tribunal, Mental Health Review Tribunal, Criminal Injuries Compensation Appeals Panel, Family Health Services Appeal Authority and the Care Standards Tribunal and we were told that their work differs between the tribunals. Under the new structure, we understand that financially qualified panel members will sit in tribunals in the tax chamber, and surveyors in the lands chamber.

### ***Expert Members***

2.16 There is a second category of non-legal Members which, for the purposes of this report, we have called Expert Members (to differentiate them from Professionally Qualified Members); these members have expertise in their own field and paragraphs 3 and 4 of the *Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008* (see Appendix D) list examples of such members including persons (other than registered medical practitioners) who are experienced in dealing with the physical or mental needs of disabled persons; and persons who have substantial experience of: service in the Armed Forces; or of educational, child care, health, or social care matters; or in an industry, trade or business sector and the matters that are likely to arise as issues in the course of disputes.

## **CHAPTER 3: THE SENIOR PRESIDENT, DEPUTY SENIOR PRESIDENT AND UPPER TRIBUNAL**

### **Senior President of Tribunals**

3.1 The Senior President presides over the new structure of tribunals and the functions of the office are set out in the *Tribunals, Courts and Enforcement Act 2007*. In its report, PricewaterhouseCoopers evaluated the post as appropriate for salary group 2; most respondents to the consultation agreed with this view. The Senior President also told us in oral evidence that, while his main function would be as Senior President, he wished also to maintain a presence in the Court of Appeal. Our understanding of the post of Senior President is that it is a job in its own right and will not be rotated among members of the senior judiciary. It has administrative responsibilities akin to those of a head of division. On that basis, we have therefore concluded that the Senior President should be placed in salary group 2. However, if the post were, in fact, to be rotated among members of the senior judiciary, then we would recommend that the postholder remain in his or her substantive salary group.

### **Deputy Senior President**

3.2 The Deputy Senior President has a non-statutory role. The incumbent is currently in salary group 5 and, in the absence of any additional information about the content of the post, we have concluded that this should remain at salary group 5 for the time being. Once we have more information about the role of this post, we would expect to either confirm or propose a change to the salary group as appropriate.

### **Chamber Presidents of the Upper Tribunal**

3.3 We understand that it may be possible for the same judge to be President of both an Upper and a First-tier Chamber and that the Chamber Presidents in the Upper Tribunal may be High Court Judges who have been asked to undertake this work, but the details do not yet appear to have been finalised. In addition, the job weight is not clear, although we note from *Transforming Tribunals*<sup>14</sup> that Chamber Presidents in the

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<sup>14</sup> Tribunals Service. *Transforming tribunals: implementing part 1 of the Tribunals, Courts and Enforcement Act 2007*. Ministry of Justice, 28 November 2007: para. 186. Available at: <http://www.tribunals.gov.uk/Documents/Transforming%20Tribunals.pdf>

Upper Tribunal will be carrying out work that is equivalent to that of the Presidents of the Employment Appeal Tribunal and the Asylum and Immigration Tribunal, who are both High Court Judges. We have concluded therefore that Chamber Presidents of the Upper Tribunal should be paid at salary group 5 (unless they are High Court Judges), at least until the weight of the job is better known.

### **Upper Tribunal judges**

3.4 In considering the position of judges in the Upper Tribunal, we have carefully considered the job evaluations prepared by PricewaterhouseCoopers, the written and oral evidence, and subsequent information that has emerged from the Tribunals Service. We have concluded that the appellate role for judges in the Upper Tribunal bestows seniority over judges in the First-tier Tribunal and therefore that the general judicial posts in the Upper Tribunal should be placed in salary group 6.1. We understand that there are some current posts whose holders will sit in both the Upper and First-tier Tribunals. In such circumstances, they should be paid as Upper Tribunal judges.

### **First-tier Chamber Presidents**

3.5 We understand from the Tribunals Service that Chamber Presidents in the First-tier Tribunal will also be judges in the Upper Tribunal. We consider that they should be placed in salary group 5 for the reasons given in paragraph 4.1 below.

### **Surveyor members of the Lands Tribunal**

3.6 The surveyor members of the Lands Tribunal are currently the only Professionally Qualified Members who sit in the Upper Tribunal. The recommendation in the PricewaterhouseCoopers report was that this post, which is currently paid at salary group 6.2, should be placed in salary group 7, unless evidence emerged that this would create recruitment and retention difficulties. However, the President of the Lands Tribunal said that he believed that PricewaterhouseCoopers had failed to understand the true nature of the surveyor members' judicial function. He stressed that surveyor members have the same judicial function as other members of the Lands Tribunal and appeal against their decision lies to the Court of Appeal. We recognise that the job evaluation scores place this post in salary group 7; however,

we consider that the appellate role affords it some seniority in comparison with other Professionally Qualified Members, all of whom sit in the First-tier Tribunal. Therefore, taking all the evidence into account we have concluded that surveyor members of the Lands Tribunal should be placed in 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.

### **Expert Member in the Upper Tribunal**

3.7 The Expert Member roles in the Transport Tribunal and the Care Standards Tribunal are the only Expert Member posts in the Upper Tribunal. We make our recommendations on other Expert Members in Chapters 4 and 7. However, we think that these posts have seniority over other Expert Members because of the appellate role that they perform in the Upper Tribunal. We have concluded that Expert Members who sit in the Upper Tribunal should be in salary group 7 and fees should be calculated on the basis of salary group 7.

### **Recommendations for salary groups**

**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.**

## **CHAPTER 4: FIRST-TIER TRIBUNAL**

### **Chamber Presidents of the First-tier Tribunal**

4.1 Our second consultation sought views on PricewaterhouseCoopers' recommendation that Chamber Presidents should be placed in salary group 5 if they have judicial management responsibilities and salary group 6.1 if they have no judicial management responsibilities. Responses to this proposal in the consultation were mixed, although this was partly because respondents thought that we should await clarification on the roles before any decision was made regarding salary group. Taking all the evidence into account, including that which has subsequently emerged from the Tribunals Service, we have concluded that in practice all Chamber Presidents will have judicial management responsibilities and will also be judges in the Upper Tribunal, and therefore they should be placed in salary group 5.

4.2 We understand that the following listed offices will fall into the category of being Chamber Presidents in the First-tier Tribunal and judges in the Upper Tribunal and are thus to be placed in salary group 5:

- President of the Social Entitlement Chamber;
- President of the General Regulatory Chamber;
- President of the Health, Education and Social Care Chamber;
- President of the Taxation Chamber; and
- President of the Lands, Property and Housing Chamber.

4.3 Some of the larger chambers will have Deputy Presidents, although the detail of this has yet to be determined and we are, therefore, unable to make any recommendation in relation to these offices.

### **Other First-tier Tribunal judges**

4.4 As we have indicated in Chapter 3, we understand that there will be some First-tier judges that sit in the Upper Tribunal and therefore we have recommended that they be paid as Upper Tribunal judges. For other judges in the First-tier Tribunal we have carefully considered the job evaluations conducted by PricewaterhouseCoopers, the written and oral evidence and other information which

we have received from the Tribunals Service. We have noted the intention to deploy First-tier Tribunal judges flexibly across jurisdictions and believe it is important that the organisational structure should be fairly simple to facilitate such cross-ticketing. We have therefore concluded that, with a few exceptions (outlined below), there should be a single grade for First-tier judges and that this should be at salary group 7 or the equivalent daily rate. If there are judges sitting only in the First-tier, who have significant management responsibilities delegated from Chamber Presidents, they should be placed in salary group 6.2.

### **Professionally Qualified Members**

4.5 There are currently two categories of Professionally Qualified Members in the First-tier Tribunal: medically qualified panel members and financially qualified panel members. We received a great deal of written evidence regarding medically qualified panel members and financially qualified panel members and explored the issues further in oral evidence. We have also noted the job evaluation work carried out by PricewaterhouseCoopers. Taking all the evidence into account we have concluded that Professionally Qualified Members in the First-tier Tribunal should be paid a proportion of the rate for salary group 7 and fees should be calculated accordingly, as explained more fully in Chapter 7.

4.6 If the post exists in the final structure, the Chief Medically Qualified Panel Member in the Social Security and Child Support Appeals Tribunal will be the only full-time salaried post held by a Professionally Qualified Member. It is currently in salary group 7, and the job evaluation supports this placement. However, our approach to placing posts in the Tribunals Service has not been totally dependent on job weight. We have also sought to supply a simple, hierarchical structure which can be applied in the same way to all three pillars. We recommend above that posts with significant management responsibilities in the First-tier Tribunal should be in salary group 6.2 and we have concluded that the Chief Medically Qualified Panel Member in the Social Security and Child Support Appeals Tribunal should also be placed in salary group 6.2, to reflect the 'head of profession' role and managerial responsibilities of the post.

## **Expert Members**

4.7 There is a variety of Expert Members who sit in the First-tier Tribunal, all of whom are fee-paid, for example: members including persons (other than registered medical practitioners) who are experienced in dealing with the physical or mental needs of disabled persons; and persons who have substantial experience of: service in the Armed Forces; or of educational, child care, health, or social care matters; or in an industry, trade or business sector and the matters that are likely to arise as issues in the course of disputes. Taking all the evidence into account we have concluded that Expert Members sitting in the First-tier Tribunal should be paid a proportion of the rate for salary group 7, as explained more fully in Chapter 7.

## **Criminal Injuries Compensation Appeals Panel (CICAP)**

4.8 We were asked to look at any potential problems which might arise from an across-the-board implementation of differential rates for different types of fee-paid office holders, and specifically in the case of CICAP where all panel members (whether legally qualified, medically qualified or lay) currently receive the same fee. Under the new structure, the CICAP posts comprise: legally qualified members, Professionally Qualified Members and Expert Members. However, CICAP functions differently from other tribunals. We were told that the position of chairman of a panel rotates between all three members during the week and that the chairman is paid an additional fee for preparing the written statement of reasons.

4.9 If we were to follow our recommendations relating to the First-tier Tribunal elsewhere in this chapter, the CICAP legally qualified member should be in salary group 7, and the Professionally Qualified Member and the Expert Member should be paid a proportion of the rate for salary group 7. However, as CICAP has argued that there should be no pay difference between its adjudicators and that pay parity should remain, we make a particular recommendation regarding the salary group of CICAP members. We recognise that CICAP functions differently from other tribunals and that it is not appropriate to have differential rates for legal and non-legal members within CICAP. As long as it continues to operate as now (i.e. with the role of the chairman of a panel rotating between members), and the nature of the job requires this, we have concluded that all CICAP members should be placed in salary group 7.

We have also concluded that any additional time spent by the chairman on writing-up should be recompensed appropriately in accordance with Recommendation 10 in Chapter 7, if that time exceeds what can reasonably be included in a ‘professional day’. However, if the Tribunals Service was to change the way in which CICAP operates, then we would wish to look at this again.

### **Recommendations for salary groups**

**Recommendation 2: we recommend 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 the chairman rotating between members), and the nature of the job requires it, all CICAP adjudicators – the rate for salary group 7.**

## CHAPTER 5: ASYLUM AND IMMIGRATION TRIBUNAL

5.1 Initially the Asylum and Immigration Tribunal will stand as a separate pillar in the new tribunals' structure, under the supervision of the Senior President. However, we understand that the government is currently considering bringing the Asylum and Immigration Tribunal into the unified tribunals' structure in 2009 and that it is likely to consult on proposals for this quite soon.<sup>15</sup> We have been told that it is likely that there will be an asylum and immigration chamber in each tier and have been given some indication of where posts are likely to be placed.

5.2 As a result of the job evaluation study, PricewaterhouseCoopers made three recommendations relating to the Asylum and Immigration Tribunal. It recommended that the office of the President of the Asylum and Immigration Tribunal should remain in salary group 4, given that it is held by a High Court Judge; it also recommended that the office of Senior Immigration Judge should remain in salary group 6.1; and it recommended that the office of Designated Immigration Judge which is currently paid at 108 per cent of salary group 7 should be placed in salary group 6.2. We consulted on all these recommendations and those who responded were generally in favour, although in the case of the office of Senior Immigration Judge one respondent proposed that Senior Immigration Judges should be placed in salary group 5 in the light of the role of the Special Immigration Appeals Commission and the fact that the job evaluation score falls marginally into salary group 5.

5.3 We have considered the job evaluations and the other evidence at our disposal and have concluded that in the interests of the unified tribunals' structure it is essential that there should be a similar structure in each of the three pillars. It is on this basis that we have formulated our recommendations for the Asylum and Immigration Tribunal.

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<sup>15</sup> Tribunals Service. *Transforming Tribunals: implementing part 1 of the Tribunals, Courts and Enforcement Act 2007 – the government's response*. Ministry of Justice, 19 May 2008: para. 3.3. Available at: <http://www.justice.gov.uk/docs/cp3007-response.pdf>

5.4 We were told that, in the event of the Asylum and Immigration Tribunal moving to the two-tier tribunal system, the following posts would most likely be moved to the Upper Tribunal: President, Deputy President and Senior Immigration Judge; and that the following posts would probably move to the First-tier Tribunal: Designated Immigration Judge, Immigration Judge and Expert Member.

5.5 We note that the President of the Asylum and Immigration Tribunal is required to be a High Court Judge and is therefore in salary group 4.

5.6 We have therefore concluded that posts should be allocated to the following salary groups, and fees calculated accordingly, in line with our recommendations on a consistent structure elsewhere in this report. We propose that the following salary groups should apply:

- Deputy President of the Asylum and Immigration Tribunal (who is equivalent to a Chamber President) – salary group 5;
- Senior Immigration Judges (who are equivalent to Upper Tribunal judges) – salary group 6.1;
- Designated Immigration Judges (who are equivalent to First-tier judges with administrative responsibilities) – salary group 6.2;
- Immigration Judges (who are equivalent to First-tier judges) – salary group 7; and
- Expert Members – a proportion of the rate for salary group 7.

### **Special Immigration Appeals Commission (SIAC)**

5.7 We note that the SIAC Chairman is always a High Court Judge and is therefore in salary group 4.

5.8 We were told by the Tribunals Service that SIAC equates to the Upper Tribunal. Therefore in line with our recommendations elsewhere in this report, we propose that posts are allocated to the following salary groups:

- SIAC Judges – salary group 6.1; and
- SIAC Expert Members – salary group 7.

## **Recommendations for salary groups**

**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 Members – a proportion of the rate for salary group 7;**
- **Special Immigration Appeals Commission Judges – salary group 6.1; and**
- **Special Immigration Appeals Commission Expert Members – salary group 7.**

## **CHAPTER 6: EMPLOYMENT APPEAL TRIBUNAL AND EMPLOYMENT TRIBUNALS**

6.1 The Employment Appeal Tribunal and Employment Tribunals will stand as a separate pillar in the unified tribunals' structure and they will be unaffected by the proposals in *Transforming Tribunals*, in so far as there is no intention to bring these tribunals into the chambers structure. The Employment Appeal Tribunal and Employment Tribunals are nevertheless within the remit for our review. The Employment Appeal Tribunal will continue to be presided over by a High Court Judge under the supervision of the Senior President.<sup>16</sup>

6.2 We have considered the job evaluation work carried out by PricewaterhouseCoopers and the other evidence at our disposal. We understand that the *Tribunals, Courts and Enforcement Act 2007* does not allow for members of the First-tier Tribunal to be cross-ticketed or assigned to the Employment Appeal Tribunal or Employment Tribunals. However, we understand that it is possible that members of the Employment Appeal Tribunal and Employment Tribunals could be cross-ticketed to the First-tier or Upper Tribunal. We have therefore concluded that in the interests of a unified tribunals' pay structure it is essential that there should be a similar pay structure for each of the three pillars, and it is on this basis that we have formulated our recommendations for the Employment Appeal Tribunal and Employment Tribunals.

### **Employment Appeal Tribunal**

6.3 We note that the Employment Appeal Tribunal President is a High Court Judge and is therefore in salary group 4.

6.4 The Employment Appeal Tribunal equates to the Upper Tribunal in the third pillar. In line with the recommendations for the Upper Tribunal elsewhere in this report, we propose that the following salary groups should apply:

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<sup>16</sup> Tribunals Service. *Transforming Tribunals: implementing part 1 of the Tribunals, Courts and Enforcement Act 2007 – the government's response*. Ministry of Justice, 19 May 2008. Available at: <http://www.justice.gov.uk/docs/cp3007-response.pdf>

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

**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; and**
- **Employment Appeal Tribunal Expert Members – salary group 7.**

### **Employment Tribunals**

6.5 The Employment Tribunals equate to the First-tier Tribunal in the third pillar. PricewaterhouseCoopers proposed, for reasons relating to job weight, that the salaried chairmen (now known as judges) of Employment Tribunals should be moved from salary group 7 to salary group 6.2 and this proposal received some support in the responses to the consultation, although other respondents expressed concern that it might undermine the creation of a unified tribunal judiciary. Taking all the evidence into account, and as we have explained in Chapter 4 and Recommendation 2, we believe that there should be a single grade for First-tier judges without management responsibility and that this should be at salary group 7.

6.6 On the assumption that the ultimate goal is to have a coherent pay structure across the three pillars, we propose that the following salary groups should apply:

- Employment Tribunals President – salary group 6.1;
- Employment Tribunals Judges – salary group 7; and
- Employment Tribunals Expert Members – a proportion of the rate for salary group 7.

6.7 In order to maintain consistency with the rest of the tribunals, the posts of Employment Tribunals Vice President (Scotland) and Employment Tribunals Regional Judge (England and Wales), which have significant management responsibilities, should move to salary group 6.2 if the current management structure is maintained.

**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.**

## CHAPTER 7: SALARIES AND FEES<sup>17</sup>

### **A new pay structure for the Tribunals Service**

7.1 In reaching our recommendations we have, of course, taken account of legal requirements as we understand them. However, it is the responsibility of the Tribunals Service to ensure that its implementation of our proposals complies with the law. When deciding how to take forward our recommendations, and particularly if these are to be phased in over several years, the Tribunals Service will need to consider equal pay issues, the employment status of both salaried and fee-paid office holders, and other aspects of legislation affecting pay and reward.

7.2 The Tribunals Service now seeks a solution that could be phased in over a period of up to five years and we believe that what is wanted is a pay structure to which the Tribunals Service can move over that period. However, while we appreciate the financial constraints under which the Tribunals Service is endeavouring to carry out these and other reforms, we do not believe that it is possible to bring all the current disparate pay systems into line in a rational structure at no extra cost. It also seems apparent to us that one of the purposes of the creation of a new structure of tribunals is to produce a more effective, and cost effective, system of tribunals' justice. Both the delivery of those changes and a transition period over a maximum of five years will afford opportunities for addressing the issue of cost, such as adopting more efficient and flexible working practices (cross-ticketing), the centralisation of tribunal accommodation and the introduction of a wider range of potential members as envisaged by the *Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008*.

7.3 We recognise that there is a need for a fair and transparent remuneration system, which compares like with like, even though it is evident that not all jobs are identical, and which provides a coherent structure across the whole Tribunals System and assists cross-ticketing. We are also conscious of possible morale issues, especially for those who might lose out from these changes. We have therefore recommended a pay system that is as simple as possible, to meet the objectives of the

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<sup>17</sup> Pensions are not within the Terms of Reference for this review.

new Tribunals Service, including in particular the ability to develop cross-ticketing between chambers and, eventually pillars. Inevitably such a system entails some departures from the principle of allocating posts to salary groups by reference solely to job weight. This may have consequences for the next major review of the judiciary.

7.4 Readers should note that the recommendations in this report relate to the tribunals' judiciary and have no implications for the courts' judiciary at this stage. We expect to look at court judiciary in the next major review of the judicial pay structure.

7.5 Our recommendations for the salary groups of the Senior President and judicial office holders in the Upper and First-tier Tribunals are in Chapters 3 and 4, for the Asylum and Immigration Tribunal in Chapter 5 and for the Employment Appeal Tribunal and Employment Tribunals in Chapter 6. This chapter deals with a number of specific issues, affecting all three pillars of the Tribunals Service, relating to the salaries and fees for each category of tribunal member, the calculation of fees, what should be covered by the fee, recruitment and retention and other relevant issues.

### **Fee rates and structure**

7.6 Not all tribunals function in the same way and this makes the design of a unified fee system more difficult. We heard that in some tribunals, while there was no difference in principle between the way in which salaried and fee-paid members were treated, in reality the full-time (salaried) members tended to be allocated the more difficult cases; furthermore, we were told that full-time members often had an administrative element in their work. Similarly, in our 1999 review we found that in some jurisdictions part-timers tended to receive the more straightforward cases, which could be completed within a limited time. However, we have no evidence of the extent to which this practice occurs throughout the Tribunals Service as a whole and therefore see no reason to depart from our previous conclusion as part of the 1999 review that it would be impracticable to devise a formula that could adequately reflect

these different practices. We believe this to be an issue for Chamber Presidents to address, should it be considered necessary.

### **The relationship between salaries and fees**

7.7 We were asked to look at the appropriate relationship between salaries and fees. Subsequently, the Tribunals Service told us that it would prefer us to look only at fee-paid members for this review and leave salaried members to the next major review of the judicial pay structure. However, we do not believe that the pay for fee-paid and salaried tribunal members can, in practice, be separated, because of the read across from salaries to calculate the daily rate, and we have therefore considered all tribunal members in this review. Furthermore, it is not possible to propose a coherent remuneration structure for the new tribunals system without considering salaried and fee-paid members together.

### **Flexible deployment (cross-ticketing)**

7.8 We were asked to look at the remuneration of those who may be asked to sit in more than one chamber or jurisdiction whether or not they are legally qualified; also to consider the expectation that non-legal members will be organised in cross-jurisdictional panels based on their type of expertise.

7.9 PricewaterhouseCoopers said that it did not believe that working across more than one tribunal should contribute substantially to job weight unless the work was of a significantly different kind from that which the judicial office holder would normally carry out. Therefore working in another similar tribunal or jurisdiction within a single chamber would not, in itself, have a significant impact on job weight. However, it said that where a judge worked in more than one chamber, or in both First-tier and Upper Tribunals, there was likely to be a more significant impact on job weight to reflect the additional work not normally associated with the main post held.

7.10 In oral evidence, we heard that several members already sat on more than one type of tribunal, but that the relative and, at times, significant difference in fees was influencing the tribunals that individuals agreed to sit on. We asked whether all judges in the same tier should be paid the same, for parity and to facilitate flexible

deployment; this received a mixed response, as there was a widespread view that significant differences existed between tribunals.

7.11 We recognise that some flexible deployment already takes place, but that some practices will need to change to accommodate the higher level of cross-ticketing envisaged by the *Tribunals, Courts and Enforcement Act 2007* and it is likely that some teething problems will be experienced while this new system settles in. However, we understand that individuals will have to satisfy certain eligibility criteria and that cross-ticketing will occur only where there is a business need.<sup>18</sup> One major problem that could arise if there were a difference in fees across jurisdictions is that the lower paid tribunals would find it more difficult to attract members and might suffer a higher dropout rate from members who cancelled a sitting in preference for one that was better paid. We offer no comment as to how such practices should be handled as this will have to be dealt with at a local level, but we have taken it into consideration when designing the proposed new pay structure. Nevertheless, we foresee that, if the administration of cross-ticketing was perceived to be too complex for fee-paid judges, this could lead to an increase in the use of salaried judges across jurisdictions.

7.12 We have also explored the possibility of whether there should be some form of incentive payment for those who work across jurisdictions. On the one hand we believe that this might be justified because of the extra knowledge and training that may be required, but on the other hand cross-ticketing already occurs and the experience needed is often common across tribunals: it is now a requirement of the new system, which is intended to lead to a simpler structure within the Tribunals Service. On balance, therefore, we have concluded that an incentive payment is unnecessary and inappropriate.

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<sup>18</sup> Tribunals Service. *Transforming Tribunals: implementing part 1 of the Tribunals, Courts and Enforcement Act 2007 – the government’s response*. Ministry of Justice, 19 May 2008: para. 3.7. Available at: <http://www.justice.gov.uk/docs/cp3007-response.pdf>

## **Affordability**

7.13 The Tribunals Service told us that judicial fees and salaries form over half of the Tribunals Service budget and that this was a far higher proportion than in the courts service. It told us that for financial year 2007-08, the total spend on pay costs for the tribunals' judiciary was £131.7 million, of which £63.0 million was on salaries (including earnings related National Insurance contributions and pensions) and £68.7 million on fees. These figures exclude expenditure on travel and subsistence.

7.14 The Tribunals Service said that it believed that more efficient and flexible working practices, in part facilitated by legislation, would lead to reductions in expenditure on fees and salaries, and that it was on this basis that the Comprehensive Spending Review settlement had been agreed. It was indicated to us that cost neutral proposals by us were desirable as no financial provision had been made for any increased costs as a consequence of our proposals. The Tribunals Service told us that any increased costs arising from our recommendations on remuneration would add to the pressures caused by the efficiency savings of £55m required under the Comprehensive Spending Review. The Tribunals Service said that any additional costs would probably need to be covered by more effective use of judicial resources and a reduction in sitting days across jurisdictions.

7.15 While we recognise the financial constraints under which all government departments must operate, we find it unrealistic that no additional money has been made available to fund this major reorganisation of the tribunals system, which has brought together over 30 different tribunals, each with its own pay structures, terms and conditions. We do not believe that it is possible to bring all the pay systems into line in a rational structure at no additional cost. Such an exercise is also bound to have winners and losers. We see our role as being to provide recommendations as to what a fair structure should look like in the longer term, although such a change cannot be introduced at zero cost. Our proposals can be phased in over a period of up to five years, reducing the immediate financial impact; and the net cost can be reduced by savings from measures such as more efficient and flexible working practices (cross-ticketing), the centralisation of tribunal accommodation and the introduction of a wider range of potential members as envisaged by the *Qualifications*

*for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008.*

### **Pay recommendations**

7.16 In designing the new pay structure we have proposed the following principles:

- that there should be three categories of tribunal members:
  - Judges;
  - Professionally Qualified Members (whom we have divided into two bands: Professional A and Professional B – see below); and
  - Expert Members;
- that the pay for all tribunal judges should be linked to the judicial salary structure, as published in our annual *Report on Senior Salaries*, (we have made our recommendations on the salary groups to which judicial office holders should be assigned in Recommendations 1 – 5);
- that it is essential that there is a clear read-across from salaried to fee-paid judicial office holders; if there is not, the system will have no logic; and
- that the daily rate for a fee-paid tribunal member should be determined by an appropriate divisor based on the relevant annual salary (or proportion thereof).

7.17 We note from the *Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008* that it sets out a number of additional categories of Professionally Qualified Members to the ones discussed in the previous paragraph; for example, registered nurses, registered dentists and pharmacologists. The Tribunals Service said it would need to consider the relative job weight for the different categories of members, but asked us to consider whether we would recommend appropriate remuneration rates to apply to the different categories of members. We therefore propose that there be two bands of Professionally Qualified Members: Professional A and Professional B. The evidence that we have received on medical practitioners, accountants and surveyors suggests that these groups often take the lead in writing-up cases, and that their work on tribunals is subject to their professions' supervision of standards of professional conduct. On this basis, we believe that registered medical practitioners, accountants and surveyors should be in the higher band, which we have called Professional A. For the remaining professional

groups listed in the Order, i.e. registered nurses, registered dentists, clinical psychologists, educational psychologists, pharmacologists, veterinary surgeons and registered veterinary practitioners, we have no evidence on which to make a recommendation into which band they should be placed and therefore leave it to the Tribunals Service to determine their banding.

**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.**

7.18 We have proposed that salaried tribunal judges should be paid according to their salary groups, that salaried Professionally Qualified Members in the First-tier Tribunal should be paid according to their salary groups within the judicial salary structure, and that fee-paid judges and Professionally Qualified Members should have their fees calculated by reference to the relevant salary group. 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. Our recommendation for Surveyor members of the Lands Tribunal is in Chapter 3 (Recommendation 1).

**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.**

7.19 For Expert Members, all of whom are fee-paid, the current situation is more complex as they are currently paid a wide range of rates which differ between tribunals reflecting the diverse approaches taken by different Departments in the past. We therefore consider that for fairness and flexibility it is important that the fees for Expert Members are rationalised across the Tribunals Service, although we recognise that this could have cost implications because of the high numbers of posts. We have concluded that Expert Members in the First-tier Tribunal (and the equivalent in the Asylum and Immigration Tribunal and Employment Tribunals) should be paid a fixed proportion of the fee for salary group 7 to reflect the lower weight of the job, compared with other members. This also has the advantage of maintaining a link to the judicial salary structure. Taking into consideration all of these factors, we believe that the rate for Expert Members should be 60 per cent of the daily fee equivalent to salary group 7. Our proposals will mean that the rates for Expert Members are consistent across the Tribunals Service and will facilitate cross-ticketing. Our recommendations for Expert Members in the Upper Tribunal are in Chapter 3 (Recommendation 1).

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

7.20 When non-legal members sitting in the First-tier (and their equivalents in the Asylum and Immigration Tribunal and Employment Tribunals) i.e. Professionally Qualified Members and Expert Members are asked to hear cases alone, or act as chairman, we believe that they should be paid as judges.

**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.**

### **The cost of the pay recommendations**

7.21 The Tribunals Service is currently in a state of evolution, which will present it with opportunities to make a number of savings. Using the new salaries and fees, and assuming that Professionally Qualified Members will be utilised equally in bands Professional A and Professional B, the proposed new structure would cost approximately an additional **£11.0 million** at current cost, at the end of the transition period of up to five years, taking no account of any other savings from the transition. This would be an increase of **£2.2 million a year** for each of five years at current prices per year, assuming the total increase is spread evenly over the transition period. Some of these costs will be offset by a reduced number of posts due to cross-ticketing and further consideration as to what posts are required within each tribunal, including how many management posts are considered necessary, as tribunals are brought into the new structure. Other potential savings include the centralisation of tribunal accommodation and the introduction of a wider range of potential members as envisaged by the *Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008*.

### **What should be covered by the fee? (The ‘professional day’)**

7.22 There is currently a lack of consistency across the Tribunals Service about what should be covered by the fee. We were therefore asked to consider the need for a coherent approach to the definition of what constitutes a payable period, for example per day, per hour etc, and whether payment for preparation time, reading, and/or time spent writing up judgments should be inclusive or separate. PricewaterhouseCoopers’ report put forward the view that, for fee-paid office holders, the fee should cover a ‘professional day’ with some preparation and writing-up time included, but with the possibility for the judicial head of the tribunal to authorise additional payment for unusually extensive preparation or writing up.

7.23 The responses to the consultation and what we subsequently heard in oral evidence demonstrated the great disparity between different tribunals, both in the basis of payment and the requirements of particular jurisdictions.

7.24 A complicating factor in our consideration of the ‘professional day’ was the separate review of terms and conditions of service carried out by the Tribunals Service in parallel with our own review of remuneration, and the potential overlap of some issues. While the Tribunals Service looked into the length of a working day, fees for attending training, cancellation fees and minimum and maximum sitting days,<sup>19</sup> we consider that preparation and writing-up time are within our remit, and as described above, were commented on in the report prepared by PricewaterhouseCoopers.

7.25 We recognise that a major issue is whether members are satisfied that they are being paid for what they do and that the concept of the ‘professional day’ is more relevant to fee-paid than salaried judicial office holders; this is because fee-paid judicial office holders may be paid a fee for one day’s work but spend differing amounts of time on preparatory and follow-up work depending on their jurisdiction. While some inconsistency between tribunals appears to be inevitable, we think that the basic principle should be that people are paid appropriately for a day’s work. Therefore, there is a need for the fee to reflect 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, without appearing to penalise those who work quickly or reward those who work more slowly.

**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.**

#### **The daily divisor (the calculation of fees)**

7.26 We were also asked to look at the appropriate relationship between salaries and fees, including the continuing applicability of the 220 divisor for determining

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<sup>19</sup> Internal consultation documents published by the Tribunals Service.

daily fees for legal members or whether a completely different system of payment should be introduced as an alternative option, for example per hour or per case.

7.27 Most of the respondents to the consultation agreed that the divisor of 220 days should be applied to the salary of a post to calculate the daily fee; others said that 215 days was the appropriate divisor as they believed that this took into account the sick pay and pension allowance paid to salaried judges in the Tribunals Service and the courts.

7.28 We previously considered the daily divisor for tribunal posts in our Twenty-First Report<sup>20</sup> in 1999. At the time, we explained that the standard divisor used for calculating the daily fee was 220 days and that we understood this represented the standard public sector working year. We said that we were not persuaded that the divisor of 220 should be changed to reflect the minimum sitting requirements in different courts or tribunals as such a link would ignore the fact that full-time post holders in all jurisdictions have a continuous commitment to the court, with consequential greater research, preparation, administrative and other obligations. Similarly for this report, we are not persuaded by the evidence to alter our earlier view and therefore do not see any reason to make any change to the divisor.

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

7.29 We deal with transitional arrangements in Chapter 8. We support the Tribunals Service approach to phase in these changes over a period of up to five years, and note that at current (2008-09) salary levels the daily fee equivalents at the end of the transition period would be:

- salary group 5 – £621 per day;
- salary group 6.1 – £575 per day;
- salary group 6.2 – £541 per day;

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<sup>20</sup> Review Body on Senior Salaries. *Twenty-first report on senior salaries*. (Cm 4245) The Stationery Office, 1999: Chapter 5.

- salary group 7 – £461 per day;
- Professional A – £415 per day (i.e. 90 per cent of the salary group 7 rate);
- Professional B – £346 per day (i.e. 75 per cent of the salary group 7 rate; and
- Expert Members – £277 per day (60 per cent of the salary group 7 rate).

### **Recruitment and retention**

7.30 We were asked to consider whether remuneration should be based entirely on job weight or whether adjustments should be made in response to market forces. In addition we were told that there were difficulties with the recruitment of medically qualified panel members and were asked to provide options which would facilitate their recruitment and retention. Specifically, we heard that a recruitment exercise in 2006 for medically qualified panel members in the Social Security and Child Support Appeals Tribunal had produced only 87 applicants for 118 posts, of whom just 57 were appointed. The Judicial Appointments Commission thought that the shortfall might be due to the relatively low fee level for these posts, particularly as medically qualified panel members in other tribunals were paid substantially more.

7.31 PricewaterhouseCoopers proposed that where there was evidence of recruitment and retention difficulties related to pay, within groups of judicial office holders with specialist skills, there should be the flexibility to vary the rate of pay to take account of these exceptional circumstances. Our consultation asked for views on this and on the possibility of linking remuneration for medically qualified panel members to locum fees. However, we have concluded that the solution to the problems surrounding the recruitment and retention of medically qualified panel members lies elsewhere.

7.32 Our recommendations for the remuneration of all Professionally Qualified Members will lead to an increase for many individuals and may thus lead to a lessening of, or possibly a solution to, the recruitment problem for medically qualified panel members, as will the Tribunals Service's actions to widen the pool of healthcare qualified professionals as outlined in the *Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008*. Nevertheless, we think that in circumstances where recruitment and retention are still considered to be a

problem, it should be possible to offer a recruitment and retention supplement for relevant groups of either Professionally Qualified Members or Expert Members. We are not in a position to define exactly what such circumstances might be and leave the decision as to which particular circumstances, for example in geographical areas or where there are difficulties in recruiting particular categories of Members, merit the payment of the recruitment and retention supplement to the discretion of the Lord Chancellor. We believe that any supplement should be time limited and reviewed every two years by the Lord Chancellor. For the supplement to be an effective aid to recruitment and retention we think that up to 20 per cent of the relevant salary or daily fee for Professionally Qualified Members or Expert Members should be adequate in the first instance.

**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.**

#### **Determining future salary and fee levels**

7.33 We were also asked to make recommendations on formulae for determining future fee levels. We propose that salaries should continue to be set by our annual review of judicial salaries. Our proposed structure contains the formulae for setting fees and how these are linked to salaries. We have also suggested appropriate salary levels for salaried posts and appropriate links to salary levels for fee-paid posts, which should be subject to annual review by us.

**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.**

## CHAPTER 8: TRANSITIONAL ARRANGEMENTS

8.1 As a means of transition to the new pay structure, PricewaterhouseCoopers suggested options such as applying the new rates of pay for newly appointed office holders only, applying pay protection for existing office holders for a period of up to four years, and introducing an immediate reduction in pay where appropriate. Bearing in mind the legal and practical implications, affordability, and issues of recruitment and retention, we asked for views on how the transitional arrangements for those fee-paid office holders who are currently paid more than the rate indicated by the revised pay structure should be handled.

8.2 Understandably, this question caused some strong feelings to be expressed and most of those who expressed opinions on the transitional arrangements were against any immediate reduction in fees. Some respondents threatened prompt resignation if there was an immediate reduction in pay and commented on the loss of goodwill essential for the smooth running of the service. Paying new appointees a new reduced rate was deemed more acceptable, as was freezing pay for those above the new rates until others caught up and giving an immediate increase to any paid below the new level. The Tribunals Service said that a system that could be phased in over several years would be more affordable.

8.3 For new appointments and existing office holders, we consider that the new salary and fee rates should be phased in over a period to be determined by the Tribunals Service, but not exceeding five years:

- for salaried and fee-paid judicial office holders, for whom our recommendations will mean an increase in remuneration, we leave it to the Tribunals Service to determine how and when the increases should be paid within the transitional period. Obviously the Tribunals Service will need to have regard to affordability and may need to stage increases;
- for salaried judicial office holders who will see a reduction in their pay as a result of our recommendations, we propose that their salaries should be maintained on a mark-time basis until such time as the pay of the relevant salary group catches up;

- For those fee-paid judicial office holders working under fixed-term appointments, whose fees would reduce as a result of our proposals, we consider that 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; and
- in the case of 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.

**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.

**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.

**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.

8.4 Our recommendations have been written with a long-term view in mind and we recognise that there are a number of posts, as yet not defined, that may not fully fit in with the structure that we have outlined in this report. The Tribunals Service told

us that initially some leadership posts will be mapped across to the new structure, but that they might disappear over time as individuals retire and as any revised management structure below Chamber President materialises. We recognise that there will be transitional concerns, but we must leave it to the Tribunals Service to determine where and how any additional posts should fit into the organisational structure that we have described, until such time as we are able to consider such posts. We will then be in a position to advise on the appropriate salary and fee rates for these new posts.

## **CHAPTER 9: THE COMPETITION APPEAL TRIBUNAL**

9.1 We have been informed that there are no plans for the Competition Appeal Tribunal to move to the Tribunals Service. However, the Competition Appeal Tribunal, which is now part of the Department for Business, Enterprise and Regulatory Reform, is included in this review at the Department's request as it seeks a link to the pay system for judges within the Tribunals Service, although it does not wish to become part of the Tribunals Service.

9.2 Competition Appeal Tribunal members told us that, even though the tribunal would remain outside the Tribunals Service, they were anxious to resolve the issue of members' pay as rates had fallen behind. Its parent department had previously rejected a request for an increase in the fees and it was important for the tribunal to be able to retain the expertise needed to handle its work.

9.3 It was said that the nature of the work was highly specialised and required the chairman to be of the same calibre as a High Court Judge which meant that it was necessary to recruit from a small pool; the Expert Members who sit with the chairman were recruited for their skills in law, economics, accountancy and business. We were told that heavy cases took an average of two to three months to complete, although the work was not continuous. The chairman was paid £600 per day, almost double the £350 daily rate of the Expert Members. We were told that the posts had been evaluated by PricewaterhouseCoopers as part of the major review of the judiciary in 2005 and concern was expressed that the recommended rate in the more recent 2007 PricewaterhouseCoopers report was lower than in 2005.

9.4 We were told that, as the procedures of the Competition Appeal Tribunal were predominantly based on consideration of written evidence, members were paid on an hourly rate, with a 'day' equating to seven hours. We were told that this system was more appropriate than a daily rate, and that tribunal members wished fees to continue to be paid at an hourly rate, which was compatible with the daily fees that could simply be divided by seven to calculate an hourly rate.

9.5 As explained in Chapter 7, this fee is intended to cover a ‘professional day’, i.e. including a reasonable amount of preparation and writing-up time. If, therefore, the Competition Appeal Tribunal chooses to continue to pay members on an hourly basis, it should take account of the fact that the daily fee is intended to include an element for preparation and writing-up time in calculating the hourly fee.

9.6 We have treated the Competition Appeal Tribunal as comparable to the Upper Tribunal and have taken a view on what these rates should now be. We think that the chairman of the Competition Appeal Tribunal should be paid at the equivalent of the rate for salary group 6.1, Professionally Qualified Members should be paid the rate for salary group 6.2, and Expert Members at the rate for salary group 7, which are the same rates as we have recommended for the Upper Tribunal; this is explained fully in Chapter 3.

**Recommendation 18: we recommend that the remuneration for the Competition Appeal Tribunal should be based on that for an 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.**



**TERMS OF REFERENCE FOR THE REVIEW**

**MINUTE FROM CHIEF EXECUTIVE, TRIBUNALS SERVICE TO OFFICE OF MANPOWER ECONOMICS – March 2007**

**Review of Tribunal Judiciary Remuneration**

I am writing further to Cathy Ashton's<sup>21</sup> letter of 7 December 2006 and the subsequent meeting of officials on 2 February 2007 to submit a more detailed brief of our requirements for the Review of Remuneration which forms one element of the larger Review of Tribunal Judiciary Terms and Conditions.

The Background to the Review of Terms and Conditions; History of the Current Fee Position; Legal Issues with the Current Position; Motivation and Morale Issues; Recruitment and Retention Issues; Non-Legal Members and List of Tribunals which fall within the Scope of this Review are set out at Annexes B to H, attached.

One possible scenario for the future for all of the Tribunals administered by DCA and those scheduled to come into being or transfer, on or before 1 April 2008, is set out as far as possible in the paper titled "A View of the Future" attached at Annex A. That document does not represent a settled plan but is one scenario which might be reached over a number of years.

The Review of Tribunal Judiciary Terms and Conditions is an essential part of that vision and is designed to address both short term and the longer term vision as set out in the paper. The aims of the review are to:-

- Review the Terms and Conditions (T&C) of Tribunal Judiciary including remuneration and Travel and Subsistence (T&S)
- Formulate a framework of appropriate T&C
- Agree transitional arrangements for existing judiciary
- Facilitate the establishment of the new judicial offices created by the Tribunals, Courts and Enforcement (TCE) Bill.

The desirable principles underlying these aims are:-

- Fairness between different office holders and jobs
- Simplicity and transparency
- Flexibility

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<sup>21</sup> The Rt Hon the Baroness Ashton of Upholland, Parliamentary Under-Secretary of State, Department of Constitutional Affairs

- Ability to attract and retain the right people
- Maintaining a diverse judiciary
- A single structured set of Terms and Conditions
- A structured career path
- Multi-jurisdictional – increased opportunities to sit in different jurisdictions

We appreciate that SSRB looked at the position of most salaried tribunal judiciary in the context of the Major Review twelve months ago and we do not envisage that you will necessarily need to revisit all of the issues dealt with then in this context. It may, of course be possible to use the conclusions from that review to inform this review. However it will be necessary to look at other tribunals which have subsequently transferred into DCA (or are due to do so in the next couple of years) which contain salaried posts which were not covered by that Review e.g. Criminal Injuries Compensation Appeal Panel (CICAP), Asylum Support Adjudicators, and the Care Standards Tribunal. There are also new tribunals which have been created since then (e.g. the Gambling Appeals Tribunal) although we appreciate it may not be possible to form a view on them.

In addition to the above salaried posts there are a number of tribunals of varying sizes which do not have any salaried posts. The largest of these is the Special Educational Needs and Disability Tribunal. A number of tribunals which have not sat for a number of years are also due to transfer to DCA by 1 April 2008 e.g. Insolvency Practitioners Tribunal and the Plant Varieties and Seeds Tribunal for England.

We have received a request from the Department for Trade and Industry that the Competition Appeal Tribunal which DTI run and which is not scheduled to transfer to DCA be included within this review to enable them to set fees in the context of wider tribunal remuneration scales.

### **Requirement**

A review of Tribunal Judiciary salaries and fees will be a key element in the wider review of Tribunal Judiciary Terms and Conditions. All the work needs to be completed in time for implementation of the Bill which is likely to be in either October 2008 or (more probably) April 2009.

We are not assuming any particular remuneration structure. Because of the competing demands of market forces in the legal and medical markets and the need for flexibility single salary and linked fee levels may no longer be appropriate. There may be an element of pay progression and/or fee supplements for the more “in-demand” specialisms, or those prepared to work flexibly.

DCA officials are considering the non-remuneration aspects of Tribunal Judiciary Terms and Conditions.

Our proposed terms of reference for the SSRB review are:

To propose a pay structure for the tribunals judiciary after implementation of the Tribunals, Courts and Enforcements Bill, including fee levels, and formulae for determining future fee levels, for each of the salaried and fee-paid offices (legal, non-legal professional and lay), having regard to:-

- the appropriate relationship between salaries and fees (including the continuing applicability of the 220 divisor for determining daily fees for legal members or whether a completely different system of payment should be introduced at least as an alternative option, e.g. per hour, per case)
- the appropriate relationship between different types of fee paid appointments e.g. legally qualified, medically qualified, lay member etc
- the need for a coherent approach to the definition of what constitutes a payable period e.g. per day, per hour etc; and whether payment for preparation time; reading; and/or time spent writing up judgments should be inclusive or separate
- the relationships between the different Tribunal tiers, chambers and jurisdictions
- the remuneration of those who will sit in more than one chamber or jurisdiction whether or not they are legally qualified
- the expectation that non-legal members will be organised in cross jurisdictional panels based on their type of expertise (a paper setting out the position with the Review of Non Legal Members is attached at Annex G)
- a greater judicial management/team leadership role for some salaried judges: supervising legal staff in the Upper Tribunal (UT), regional/ area managers in the First-tier Tribunal (FTT), case management e.g. deciding appropriate panel composition
- the new role of chamber Presidents
- whether remuneration should be based entirely on job weight, or whether adjustments should be made in response to market forces
- all other relevant factors including the financial constraints under which this exercise is being carried out

In the process to make any recommendations for interim fee levels under the existing Tribunal system, prior to the implementation of the new Tribunal structure.

### **The Financial Context**

Judicial fees and salaries form over 50% of the TS budget, a much higher proportion than in HMCS. We believe that more efficient and flexible working practices, in part facilitated by legislation, will lead to reductions in expenditure in this area. This is the basis of the funding settlement we have received in SR07. An overall increase in expenditure on judicial salaries and fees as a result of this review is therefore not affordable.

### **Particular issues on which SSRB advice is sought**

There are difficulties with recruitment of medical members in all tribunals where they are required. The details of this issue are set out in the annex headed Recruitment and Retention Issues at Annex F. SSRB are invited to look at the issues raised above and provide options which would facilitate recruitment and retention of medical members.

There are potential issues with the across the board implementation of differential fees for different types of fee paid office holders, e.g. CICAP where all panel members (whether legally qualified, medically qualified or lay) currently receive the same fee. This is again set out in the Recruitment and Retention paper at Annex F. It would be helpful if any proposed differential treatment of different types of office holder was fully justified. If the Review Body believes that such differentiation would normally be justified, is there any case for exceptions to this general principle e.g. at CICAP or elsewhere?

Lastly, but by no means least, there are legal issues surrounding claims for access to judicial pensions schemes under Equal Pay and Discrimination law and the European Part-Time Workers Directive. This is set out in more detail in Annex D which also refers to SSRB's consideration of these areas when they last reviewed judicial fees back in 1999. Given the ongoing nature of these claims and the potential cost of any such benefits we would wish to avoid introducing a remuneration system which enhanced the strength of these claims. In the event of an adverse ruling on this point then we would probably need to revisit the level of fees.

**A VIEW OF THE FUTURE:**

**THE TRIBUNALS JUDICIARY AFTER IMPLEMENTATION OF THE TRIBUNALS, COURTS AND ENFORCEMENT BILL AND THE TRIBUNALS SERVICE DELIVERY MODEL**

**Introduction**

1. The Tribunals, Courts and Enforcement (TCE) Bill creates a new legislative framework for the tribunals judiciary. The framework is intended to preserve the strengths of the present system – expertise and accessibility – while bringing more flexibility, and a unified approach where that is appropriate. The Tribunals Service (TS) delivery model is intended to improve the efficiency of administrative support for tribunals’ judicial functions by separating out hearing centres from processing. Both strands assume that there is scope for cross-jurisdictional working by both judiciary and staff. Together they imply changes to the nature and content of the judicial role in tribunals, and this section sets out a picture of how that role might look when all these measures are in operation. It must be emphasised, however, that this “vision” is only one possible outcome and may in any event take many years to reach.

**The Pillars**

2. The structure of the Asylum and Immigration Tribunal (AIT) and the Employment Tribunals (ETs)/Employment Appeal Tribunal (EAT) do not change as a result of the Bill. The judicial offices remain as they are now. All other jurisdictions will be gathered into two new tribunals, the First-tier tribunal (FTT) and the Upper Tribunal (UT), each with a single judicial office for judges and a single office for other members. There will therefore be three jurisdictional pillars to the new system: the FTT and UT; the ETs and EAT; and the AIT.
3. Though they are separate pillars in terms of legislation the TCE Bill and delivery model will bring them closer together. The judges and other members will be able to sit in other areas of work subject to the agreement of the jurisdictional president concerned. All the tribunals will be subject to direction from the Senior President. And the delivery model will mean that hearings will take place in centres which will normally cover more than one pillar and administrative processing will be from offices covering more than one jurisdiction.

**Chambers**

4. There is provision in the Bill for the division of the FTT and UT into chambers. A chamber is a grouping of similar functions or jurisdictions and the judges and members of the chamber are considered sufficiently expert to do more or less the full range of work within it. Each chamber has a president

who is responsible for maintaining levels of expertise, particularly by their power to give or withhold consent for a judge to join the chamber from another chamber or the ET or AIT.

## **The Upper Tribunal**

5. The UT is primarily an appellate body, hearing appeals on points of law from the FTT. It will however hear some first-instance cases, chosen by itself or a chamber president, and some of its appellate jurisdictions may go wider than points of law.
6. The complete range of functions in the UT are not yet settled but the main groups of work so far identified are likely to be:

### **Existing appellate functions**

- The Social Security, Child Support and Pensions Appeal Commissioners
- Lands Tribunal appellate jurisdiction
- Transport Tribunal – appeals from Traffic Commissioners

### **New appellate functions**

- Direct and indirect tax
- Mental health
- Special Educational Needs and Disability
- Transport – appeals from FTT

### **First-instance**

- Remaining Lands Tribunal jurisdictions
- Financial Services and Market appeals
- Complex or important cases from any FTT jurisdiction

### **Judicial review**

- Transferred judicial review cases from High Court or Court of Session, generally relating to the core jurisdictions of the FTT and UT (i.e. not including immigration)

7. The main judicial members of the UT are likely to be:

- The Senior President
- Seconded High Court Judges (probably including the HCJs who are presidents of the AIT and EAT)
- Seconded circuit judges
- Chamber presidents
- The existing Social Security Commissioners and Lands Tribunal members
- Some or all of the existing salaried Special Commissioners of Income Tax

- Senior Immigration Judges
  - Possibly some others appointed by competition if the numbers are insufficient
8. There will also be deputy judges, mainly drawn from the salaried FTT judiciary. The core group in the membership are the Social Security Commissioners, having regard to their numbers and the likely workload. For non-legal members, see paragraphs 21-23 and Annex G.
  9. Notwithstanding the separate and specialised origins of the UT judiciary, we intend that the UT should become a unified and collegiate body with a reasonably high level of flexibility between jurisdictions. We expect that the judges will operate from a small number of bases – possibly just London and Edinburgh – though with administrative backup from elsewhere and with hearings taking place throughout the country. We are working on the assumption at the moment that the body will be small and cohesive enough not to require division into chambers. We would expect judges usually to sit alone but with scope for panels of two or three where appropriate. These panels could comprise legal specialists in a single field, a mix of legal specialisms, or a mix of legal and non-legal specialists. A substantial proportion of the work may be on paper, and many appellants will continue to be unrepresented or poorly represented.
  10. The Senior President is the president of the UT. In practice he may delegate powers to other judges and there may from time to time be a de facto deputy president.
  11. The UT will have legal staff working to them, as the Social Security Commissioners have now. Staff may take on more judicial powers and may also act as mediators in the future: this implies more of a supervisory, “team leadership”, role for the UT judges and fewer cases progressing to judicial hearing. There are significant constitutional and practical issues around the use of staff but if these can be resolved it will be important that the tribunals’ judiciary are properly remunerated for any supervisory role they may acquire.
  12. We envisage a closer working relationship between the UT and the FTT than is possible now between first instance and appellate jurisdictions. All UT judges are judges of the FTT too and it is possible they will sit there and take on leadership roles there.

### **First-tier Tribunal**

13. The FTT will be almost entirely a body which deals with appeals from local or central government decision-makers. It will probably take on the jurisdictions of:

- Appeals Service (social security and child support appeals, although the latter may change as a result of reforms to the child support system)
  - General and Special Commissioners of Income Tax
  - VAT & Duties Tribunals
  - SENDIST
  - MHRT
  - PAT
14. It will also take on smaller jurisdictions and over time others will be added to it, particularly in the regulatory area.
15. The FTT will be divided into chambers. The number of chambers has not yet been decided but it will be fewer than the number of existing tribunals. A possible structure would be three chambers:
- Social security and pensions
  - Tax and regulation
  - Mental health and other welfare issues
16. The judges will be the existing tribunal chairs, augmented by judges from the Upper Tribunal and the courts (it is envisaged that Circuit Judges and District Judges will sit more in tribunals), as well as ETs and AIT. The tribunal judges will be eligible to sit in chambers, ETs and AIT but not in the courts. That change, if it is to be made, will have to wait for further legislation. It does not imply that tribunal judges are by definition unsuitable for court work.
17. At present what this group of judges does, how they do it, and who they have to sit with is fairly tightly controlled by legislation. We intend for the future that there will be much more flexibility for tribunal judges so that:
- They will routinely sit in two or more jurisdictions (including ETs and AIT), sometimes even at the same session
  - Panel composition will be dictated by the needs of the case and thus a judicial management decision
  - The form of the hearing may be less rigidly defined and may include video- or tele-conferencing
  - They may be involved in mediation and other forms of alternative dispute resolution
  - They may supervise the exercise of judicial roles by staff
  - They may be involved in feedback to decision-makers
  - Some or all salaried judges may be involved in the management of the fee-paid team members
18. Over time we would expect a larger proportion of the workload to be undertaken by salaried judges, and they would take on the bulk of the non-sitting functions described above. However, there is likely to be a heavy reliance on fee-paid members for the foreseeable future, certainly heavier than

in the courts. This is because of value for money considerations and the greater volatility of tribunal workload compared to the courts.

19. Judges would be based in a multi-jurisdictional hearing centre and would be expected to travel to other hearing centres, and to attend administrative support centres to deal with interlocutory work. Salaried judges in particular may also expect to be appointed as deputy judges of the Upper Tribunal.
20. Judicial management is likely to be on a multi-jurisdictional basis. The Senior President is likely to delegate his powers over the listing of cases to regional or area judicial managers who will manage all the judges and members in an area, even judges from jurisdictions in which they do not sit, in cooperation with the Tribunals Service area managers and their staff. Management includes the full range of people management functions including appraisal, training, mentoring and discipline.

### **Non-legal members**

21. The formalised roles of non-legal members (NLMs) are likely to change substantially. They are likely to be organised into cross-jurisdictional panels based on their type of expertise, particularly those who have a recognised professional qualification (e.g. medicine; accountancy), and to be available to any jurisdiction, whether in the Upper Tribunal or the First-tier Tribunal, which needs their expertise. They are less likely to have to sit automatically in every case of a particular type and to be used not just to sit but to deal with work outside formal hearings such as:
  - Advising judges and staff as to how to approach issues
  - Conducting medical examinations or scrutiny of documents and reporting on the results
  - Presiding over or participating in meetings of expert witnesses
  - Mediating and other forms of ADR
  - Feedback to decision-makers
22. In the First-tier tribunal, when NLMs do sit, they may not always have a judge on the panel, or they may act as chair even if a judge is on the panel.
23. There are likely to be salaried NLMs, particularly on the medical panel.

## BACKGROUND TO THE REVIEW OF TERMS AND CONDITIONS

The White Paper 'Transforming Public Services: Complaints, Redress and Tribunals,' published in July 2004, set out the Government's plans to create a unified tribunal system for central Government tribunals. This system involves some significant changes to the tribunals' judiciary, including a new system for appointing and deploying legally qualified members and the consolidation of the wide range of tribunal offices into a small number of new, generic offices.

There are two strands to the construction of the new system: administrative and legislative. In the administrative strand the Tribunals Service was created on 1 April 2006 when five major tribunals transferred from their previous Government Departments to join existing DCA Tribunals under the leadership of the Senior President designate of Tribunals, Lord Justice Carnwath. Other Tribunals are scheduled to join the Tribunal Service over the course of the next few years.

The legislative strand is the Tribunals, Courts and Enforcement Bill which was introduced in the House of Lords on 16 November 2006. It is intended to unify the tribunals' judiciary into a cohesive but expert corps. At present there are about 6000 tribunal members holding some 40 or so different posts. The Bill creates two new generic tribunals with their own judicial offices, which will initially be filled by existing tribunal judges transferring in. The Employment Tribunals and the Asylum and Immigration Tribunal will remain as separate entities but the framework created by the Bill will facilitate a more flexible judiciary, able more easily to sit across a range of jurisdictions.

To allow for the creation of the new offices under the Bill and to start to build a unified service requires a framework of appropriate terms and conditions to reflect the new arrangements. A review of Judicial Terms and Conditions was mandated in the Tribunals Service Business Plan 2006-07 published on 3 April 2006. The overall aims are to:

- review the Terms and Conditions of Tribunal Judiciary including salaries, fees and Travel and Subsistence (T&S)
- formulate a framework of appropriate Terms and Conditions
- agree transitional arrangements for existing judiciary
- facilitate the creation of the single judicial office

## HISTORY OF CURRENT FEE POSITION

In Chapter 5 of its 1999 Report, the Review Body dealt with the level of fees for fee-paid legally qualified judicial office holders (JOHs). It recommended that the daily fees of legally qualified JOHs (including Tribunal members) should continue to be determined by applying a divisor of 220 to the corresponding salary. This is conventionally regarded in the Civil Service as the number of days in the full time "working year" after allowing for annual leave and public and privilege holidays. The Review Body considered the argument presented to it that the fee should carry a premium to compensate for benefits available to salaried office holders but not fee paid JOHs, but decided against such a compensatory adjustment (paragraph 113). The Review Body also considered the argument that fee paid JOHs do not have the full range of responsibilities of salaried counterparts but found that there was no clear pattern on this and decided not to make anything of it (paragraph 114).

DCA has continued to operate the recommended practice for the legal fee-paid JOHs for which it has always had administrative responsibility, i.e. the daily fee has been calculated by dividing the current rate of salary of the corresponding (actual or imputed) salaried office by 220. This means that there is a range of "correct" fee levels for fee-paid legal members of Tribunals which have been determined by dividing current salary levels, for Group 7 or above, by 220. (The London Weighting allowance is disregarded, as recommended by the Review Body at paragraph 112). However, other Government Departments did not follow this practice prior to the transfer of administrative responsibility to DCA so that there is in practice a range of different figures, e.g. fee-paid Employment Tribunal Chairmen currently receive £421 (rather than the "correct" rate of £439) and fee-paid Appeal Tribunal Chairmen get £381.

There has been even less consistency in the approach taken by different Departments to the remuneration of fee-paid offices held by non-legal professionals (e.g. medical practitioners, accountants, etc) and by lay persons, which makes it impossible to see any pattern or consistency of approach in the wide scatter of current fee levels for these two categories. We are not aware of any previous analysis by the Review Body of the fees for non-legal JOHs.

## LEGAL ISSUES WITH CURRENT POSITION

Fee paid judicial office holders (JOHs) have always been treated as office-holders, not employees, for domestic law purposes and on that basis have not had access to conventional employment rights or protections. In more recent times, however, Employment Tribunals, without achieving any overall consistency of approach, have been more willing to treat JOHs as “workers” for the purpose of European Directives and to treat them accordingly as subject to these Directives, and to the legislative provisions transposing them into domestic law. Office-holders are now explicitly covered by the domestic Regulations transposing the most recent tranche of European Directives, covering discrimination on grounds of gender, race, age, disability, sexual orientation and religion and belief.

This European-inspired trend in the law, and other factors, appear to have made fee-paid JOHs much more prepared to claim legal rights from Employment Tribunals. The main area of current contention relates to pension rights. Fee-paid service as a JOH, unlike that of salaried JOHs, has never been pensionable, but a number of cases have now been brought by fee-paid JOHs seeking retrospective access to the judicial pension schemes. These claims have invoked not only the equal pay and discrimination law referred to above but also for instance the European Part-Time Workers Directive and the Part-time Workers (Prevention of less Favourable Treatment) Regulations 2000 transposing that Directive into domestic law. This is despite the fact that fee paid judicial office holders are specifically excluded from the scope of the Regulations, the claimants arguing that this exclusion is incompatible with the Directive. These cases are currently ongoing before Employment Tribunals.

The SSRB has itself referred to the value of the judicial pension as being between 32% and 35% of annual salary for the salaried judiciary, on the basis of calculations made by the Government Actuary. If fee-paid JOHs were to secure pension rights (or in the alternative receive an “add-on” to the daily fee as a proxy for pension benefits), this would presumably be broadly the value (either notional or actual) of the additional element involved. (The provision of actual pension benefits to fee-paid JOHs would not only be hugely expensive but also involve a significant amount of administrative complexity). More generally, the broad trend in recent years shows a much greater awareness of the scope for, and readiness to bring, legal proceedings on the part of the fee-paid JOHs designed to secure overall parity with salaried JOHs. The argument that there should be a premium for fee paid JOHs, to compensate for benefits available to salaried office-holders but not to them, was raised with the Review Body in the context of its 1999 review of fees but it decided then not to recommend such a compensatory adjustment (paragraph 113).

## MOTIVATION AND MORALE

As the Review Body is aware, the detailed outcome of the **Major Review of Judicial Salaries** disappointed some office holders who had hoped that their posts would be regraded upwards. In particular there was disappointment for those in salary group 6.2, some of whom had assumed from the Consultation Document that a remerger with Group 6.1 would take place, with favourable consequences in terms of both status and remuneration. In particular in this latter context, disappointment was expressed on behalf of the Special Commissioners and Chairmen of the VAT and Duties Tribunals. The President of the Pensions Appeal Tribunals has also expressed his concerns.

The tribunals' judiciary face a period of change. Inevitably there will be mixed feelings and uncertainty about change. There are some concerns among the Employment Tribunal judiciary that the special nature of Employment Tribunals will be lost if these Tribunals do not form a separate pillar within the Tribunals Service. These concerns have been increased by the decision to manage jointly the administrative support for Employment Tribunals and Social Security and Child Support Appeals within the Tribunals Service even though the judiciary are not directly affected. The latter change is part of the Tribunals Service's commitment to provide a single, unified administration that will be more flexible and responsive to change and will not threaten jurisdictional expertise.

There have also been concerns among the wider tribunals' judiciary about proposals in the draft Tribunals, Courts and Enforcement Bill that would lead to a more flexible system of judicial deployment. The Bill would see the creation of two new, generic tribunals into which most existing jurisdictions would be mapped. Tribunal judges would then be assigned to one or more jurisdictional 'chambers' within these tribunals, a system of deployment akin to "ticketing" in the courts. While the proposals are aimed at removing the current obstacles to the tribunals' judiciary sitting in more than one jurisdiction, some tribunal judges are worried that this too would lead to a dilution in jurisdictional expertise or pressure to sit in jurisdictions they do not want to sit in. DCA have been quick to assure them that this will not be the case, and that the new system will be based on merit. DCA have also included in the Bill the statutory safeguard that any such assignment would require the consent of the relevant Chamber President and the system established will not compel anyone to sit outside their current jurisdiction or the chamber into which they are transferred.

On the other hand, many tribunal judges and members are very positive about the changes which a more unified and flexible system will bring. But as with any programme of change, remuneration arrangements have the potential to damage positive attitudes if they are perceived to be unfair or are not fully understood.

**RECRUITMENT AND RETENTION**

Problems exist for recruiting medical members to all Tribunals in which they are required. The principal tribunals which use medical members are:

The Criminal Injuries Compensation Appeals Panel (CICAP)

The Pensions Appeal Tribunals (PAT)

The Mental Health Review Tribunal (MHRT)

The Social Security and Child Support Appeals Tribunal (SSCSA)

The recruitment problems these tribunals face are multifaceted. MHRT, SSCSA and CICAP require specialists within the medical field, MHRT require all medical members to be Consultant Psychiatrists, SSCSA require consultants to deal with industrial injury and disease and vaccine damage cases and CICAP require medical professionals with experience of assessing injuries. Therefore these tribunals are recruiting from a very small pool of applicants.

While SSCSA and PAT can call on a larger pool of applicants, there are other factors which act against them. The new GP contracts issued by the DoH mean that for GPs to sit on Tribunal Panels they have to find a locum to cover their work. The level of fee is often not sufficient to cover the locum fee and the hassle of finding one in the first place. Therefore many do not apply for competitions.

While the Tribunals Service will be looking at the flexibility provided by the Bill for the scope to involve healthcare professionals other than doctors, or to use doctors in a different way, it is unlikely that tribunals will ever offer an alternative career route for healthcare professionals of any kind. There may be salaried posts from time to time but they will never be numerous. Fee paid members will be expected to know about the current developments in their field of expertise. This requirement is usually taken to mean that they must continue to practise. GMC requirements will reinforce this.

We are not aware of any general problems with recruitment for other posts within the Tribunals Service.

There are some instances, most notably CICAP, where all panel members are paid the same fee irrespective of the expertise they bring to the jurisdiction in which they sit. In the areas where this is the case the panel members feel that the payment of the same fee to all members helps to create a collegiate system in which any member can be appointed to chair hearings. There is also concern that if the fee were to be reduced for any of the groups then this might have an adverse effect on recruitment, retention and ultimately the quality of members.

## REVIEW OF THE ROLE OF NON-LEGAL MEMBERS

The White Paper ‘Transforming Public Services: Complaints, Redress and Tribunals,’ published in July 2004, identified the need to review the role of non-legal members.

The White Paper identified three key issues:

- What precisely the role of non-legal members should be;
- Whether in fact it is desirable for a tribunal to have a particular expert on the panel as opposed to being available as a witness for the tribunal; and
- What role non-lawyers can and should play in the new alternatives to hearings, which the Tribunals Service is intended to develop.

Baroness Ashton formally announced the Review itself in her speech to the Council on Tribunals’ Annual Conference on 15 November 2005. The aims of the Review were:

- To document the existing use of the different types of member across the tribunals that will be administered as part of the Tribunals Service, including legal framework, qualifications, numbers, cost, demographic breakdown, and frequency of sitting;
- To identify any need for changes to remuneration, terms and conditions;
- To identify what different tribunal members, government departments and other stakeholders and users of the system consider non-legal members bring to tribunal proceedings; and
- To make recommendations as to the most effective and efficient way of using the totality of judicial resources available to the Tribunals Service, including the potential for utilising non-legal members across tribunal jurisdictions.

An initial data-gathering exercise, completed in June 2006, collected detailed information about NLMs across a wide range of tribunals, not just those that form part of the Tribunals Service.

This was followed up with a series of discussion groups with both non-legal and legally qualified members from a cross-section of tribunals, held over the summer of 2006. The discussions, chaired by Baroness Ashton, raised a number of issues about the future role and deployment of NLMs.

The findings from the data-gathering exercise and the discussion groups will inform a public consultation. This is expected to form part of a wider Tribunals Service consultation paper, picking up a range of issues including implementation of the Tribunals, Courts and Enforcement Bill.

## **LIST OF TRIBUNALS THAT FALL WITHIN THE SCOPE OF THE REVIEW**

### **1. Tribunals currently administered by the Tribunals Service**

- Adjudicator to HM Land Registry\*
- Asylum and Immigration Tribunal
- Criminal Injuries Compensation Appeals Panel
- Employment Tribunals for England and Wales, and for Scotland
- Employment Appeals Tribunal
- Finance and Tax Tribunals - includes:
  - Financial Services and Markets Tribunal
  - Pensions Regulator Tribunal
  - Special Commissioners of Income Tax\*
  - VAT and Duties Tribunals
- Gender Recognition Panel (uses SSCSA judiciary)
- Immigration Services Tribunal
- Information Tribunal
- Lands Tribunal for England and Wales
- Mental Health Review Tribunal for England
- Pathogen Access Appeals Commission
- Pensions Appeal Tribunal for England & Wales
- Proscribed Organisations Appeals Commission
- Social Security and Child Support Appeals
- Social Security and Child Support Commissioners\*
- Special Educational Needs and Disability Tribunal for England
- Special Immigration Appeals Commission
- Transport Tribunal

### **2. New Tribunals Service Tribunals**

- Charity Tribunal
- Claims Management Service Tribunal (using Finance & Tax judiciary)
- Consumer Credit Appeals Tribunal ~
- Gambling Appeals Tribunal\*

### **3. Other Central Government Tribunals to transfer as agreed on or before April 2008~**

- Adjudication Panels for England Communities & Local Government
- Asylum Support Adjudicators\* HO
- Care Standards Tribunal DoH

- Estate Agent Appeals DTI (shared panel with Consumer Credit Licensing Appeals DTI)
- Family Health Services Appeal Authority DoH
- *Insolvency Practitioners Tribunal DTI*
- *NHS Medicines (Control of Prices & Profits) Tribunal DoH*
- *Plant Varieties and Seeds Tribunal for England DEFRA*
- *Police Pensions Appeal Tribunal HO*
- Reserve Forces Appeal Tribunal MOD

#### 4. **Other Central Government Tribunals that have requested inclusion**

- Competition Appeal Tribunal DTI

~ new in DCA 1/4/08 (currently in DTI as Consumer Credit Licensing Appeals)

\* Tribunal has legal members only

*Tribunals in italics* are moribund, have not sat for a number of years or rarely have a case

**METHODOLOGY AND SUMMARY OF RESPONSES TO THE  
CONSULTATION ON THE REPORT BY PRICEWATERHOUSECOOPERS**

**Methodology**

1. To help us undertake this review, we engaged consultants, PricewaterhouseCoopers, to carry out a job evaluation of the various roles of the tribunals' judiciary, to examine the existing salary and fee structures of the different tribunals and to make proposals for us to consider, together with the other evidence we received, for a unified structure taking account of planned and likely developments in the organisation of tribunals.
2. PricewaterhouseCoopers conducted a job evaluation study between May and September 2007 of the tribunals' judiciary, using the job evaluation methodology that it had used for the major review of the salaried judiciary in 2005,<sup>22</sup> with adaptations where necessary to reflect the work of the tribunals' judiciary. PricewaterhouseCoopers carried out 128 evaluations of jobs within the tribunals' judiciary, covering 83 different judicial offices in 23 tribunals. As part of the job evaluation process, it gave interviewees the opportunity to comment on their job summaries and to obtain copies of their scores. Finally, in terms of the sample representation, PricewaterhouseCoopers took into account information from the 2005 review, when reaching conclusions for the 2007 review, and found that its 2007 results were consistent with those for the major review in 2005.
3. We issued the PricewaterhouseCoopers report<sup>23</sup> for a three-month consultation on 19 October 2007 and received 84 responses. The consultation sought views: on PricewaterhouseCoopers' proposals regarding certain posts held by salaried judicial office holders; on fee rates, transitional arrangements, the 'professional day' and the

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<sup>22</sup> Review Body on Senior Salaries. *Twenty-eighth report on senior salaries*. (Cm 6727) TSO, 2006: Chapter 4. Available at:

<http://www.ome.uk.com/downloads/28th%20Report%20on%20Senior%20Salaries%20-%202006.pdf>

<sup>23</sup> Review Body on Senior Salaries. Judicial Sub-committee. *Review of tribunals' judiciary remuneration: consultation document*. 19 October 2007: Appendix B. Available at: <http://www.ome.uk.com/downloads/Full%20consultation.pdf>

standard divisor used for calculating the fee for fee-paid judicial office holders; on the remuneration of fee-paid medical members and others with specialist skills; on the office of the Senior President of Tribunals and the Chamber Presidents under the new tribunals system; and any additional relevant observations.

4. We sought views through responses to the following eight questions on the proposals made by PricewaterhouseCoopers in their report:

*Questions relating to salaried judicial office holders*

**Question 1**

What are your views on the proposals by PricewaterhouseCoopers with regard to the following salaried judicial office holders?:

- The **office of the President of the Asylum and Immigration Tribunal** should remain in salary group 4;
- The **office of Senior Immigration Judge** should remain in salary group 6.1;
- The posts of salaried judicial office holders in the **Finance and Tax Tribunals** which are currently placed in salary group 6.2 should be moved up to salary group 6.1, on the basis that they continue to work in both the tax and regulatory tribunals;
- The **office of Designated Immigration Judge** which is currently paid at 108 per cent of salary group 7 should be placed in salary group 6.2;
- The salaried **Chairmen of Employment Tribunals** should be moved from salary group 7 to salary group 6.2;
- The office of **Surveyor Member of the Lands Tribunal**, which is paid at salary group 6.2, should be placed in salary group 7, unless evidence emerges that this would create recruitment and retention difficulties.

*Questions relating to fee paid judicial office holders*

**Question 2**

What are your views on PricewaterhouseCoopers' three possible structures based on two, four or five **fee rates** for fee paid judicial office holders?

**Question 3**

Bearing in mind legal and practical implications, affordability, recruitment and retention, what are your views on how the **transitional arrangements** for those fee paid office holders who are currently paid more than the rate indicated by the revised pay structure should be handled?

#### **Question 4**

What are your views on PricewaterhouseCoopers' proposals that, for fee paid office holders, the fee should cover a "**professional day**" with some preparation and writing up time included, but with the possibility for the judicial head of tribunal to authorise additional payment for unusually extensive preparation or writing up?

#### **Question 5**

What are your views on PricewaterhouseCoopers' proposal that the **divisor of 220 days** should continue to be applied to the salary of a post to calculate the daily fee?

#### ***Questions relating to fee paid medical members***

#### **Question 6**

What are your views on PricewaterhouseCoopers' proposals with regard to the remuneration for fee paid medical members:

- Should the remuneration be linked to the cost of any **locum cover** for which medical members must pay when they carry out tribunal work?
- What are your views on the proposal that the reimbursement of locum costs could be achieved by taking the difference between the locum fee and the fee rate for tribunal work and **reimbursing this to the medical practice** on receipt of a suitable claim and evidence of expenditure?
- Do you think that a **further fixed sum** should be added to the amount reimbursed to ensure that medical members gain some financial benefit from undertaking tribunal work?

#### **Question 7**

What are your views on PricewaterhouseCoopers' proposal that where there is evidence of recruitment and retention difficulties related to pay, within groups of judicial office holders with **specialist skills**, there should be the **flexibility to vary the rate of pay** to take account of these exceptional circumstances?

#### ***Questions relating to posts under the new tribunals system***

#### **Question 8**

What are your views on PricewaterhouseCoopers' proposals on the following posts in the new tribunals system?

- The **office of the Senior President of Tribunals** should be placed in salary group 2?
- The **Chamber Presidents** should be placed in salary group 5 if they have judicial management responsibilities and salary group 6.1 if they have no judicial management responsibilities?

## **Responses**

5. Many of the respondents to the consultation were critical of the job evaluation methodology, in particular arguing that the sample size was too small and that those who were interviewed for the job evaluations were not a representative sample for each tribunal; respondents also expressed concern about the application and suitability of the job evaluation criteria and the resultant scores; some respondents alleged that there were also factual errors in the report. To address this we asked PricewaterhouseCoopers for its comments and reassurance that the job evaluation process had been sound and for its judgement on the weight that we should give to the concerns raised. PricewaterhouseCoopers provided us with a detailed and robust response. It told us that although some respondents had sought to challenge the job evaluation method, it did not see anything in the responses to suggest that it had failed to take account of any fundamental aspect of the work of any of the judicial office holders who had expressed concern. It said that the interviews had been conducted in the context of an overall understanding of the work of the tribunals, enabling atypical work to be identified and assessed.

6. *Responses received:*

- 30 per cent (n=25) from representative organisations/associations
- 70 per cent (n=59) from individuals.

7. *Numbers and categories of respondents:*

- 13 per cent (n=11) Senior Presidents / Presidents
- 35 per cent (n=29) Legally qualified members
- 24 per cent (n=20) Medically qualified members
- 24 per cent (n=20) Specialist / Non Legal members
- 5 per cent (n=4) Other Bodies.

## **Analysis of responses:**

8. The responses were analysed to determine whether respondents considered the proposals to be fair and workable, to consider the proposals they supported and why, and those they did not support and why.

9. The figures above represent the number of respondents who specifically responded to the questions asked in the document. The majority of respondents gave a general comment on the review without commenting specifically on any of the questions asked in the document.

10. The percentage of the 84 respondents who commented on each question is shown against the questions below.

***Comments on PricewaterhouseCoopers' report:***

11. 46 per cent (n=39) of respondents were disappointed with PricewaterhouseCoopers' report. The majority of the respondents alleged that there were flaws in the methodology, job evaluation criteria, the scoring and the sample size used by PricewaterhouseCoopers in drawing up their proposals. Others alleged inaccuracies in the description of their work which they said resulted in their jobs being under scored. 5 per cent (n=4) of respondents were pleased with the report and 48 per cent (n=40) did not comment on any aspects of PricewaterhouseCoopers' report.

***Questions relating to salaried judicial office holders.***

**Question 1:**

12. 14 per cent commented on question 1: 12 responses were received. The majority of these respondents did not comment on any of the proposals in the six part questions; instead those who commented answered the questions in relation to their own jurisdiction and gave the likely impact of the proposals in their jurisdiction. Only 50 per cent (n=6) of respondents commented on question (1e): they agreed that Salaried Chairmen of the Employment Tribunal should be moved from salary group 7 to Salary group 6.2. No other specific comments were given in relation to the other proposals.

### *Questions relating to fee paid judicial office holders*

#### **Question 2:**

13. 36 per cent commented on question 2: 30 responses were received. 33 per cent (n=10) of respondents favoured the two fee-rate structure: they commented that it gave a more appropriate market rate in comparison to the two other fee rate structures and that it gave clear distinctions between the various grades in all the tribunals. 13 per cent (n=4) of respondents were in support of the four fee-rate structure. They saw it as the less divisive of the structures and it was perceived to be the most likely of the three structures to be adopted by the Tribunals Service because of the cost implications of structure one. None were in favour of structure three, although some respondents commented on the slight increase in the fee rate of their non-legal members in structure three. 53 per cent (n=16) gave mixed views.

#### **Question 3:**

14. 30 per cent commented on question 3: 25 responses were received. 88 per cent (n=22) of respondents were against the proposal to revise the fee rates of office holders who were currently paid more than the rates indicated in the revised structures. They commented that it would lead to the exodus of members and definitely create a retention issue in all the jurisdictions. Some respondents questioned the legality of such a proposal. One respondent supported the proposal that those who had been grossly underpaid should not be made to remain so any longer as suggested in paragraph 5.15 of the PricewaterhouseCoopers report. Two respondents did not comment on the proposals.

#### **Question 4:**

15. 49 per cent commented on question 4: 41 responses were received. 68 per cent (n=28) of respondents agreed that fees should cover a 'professional day' with some preparation and writing up time included. 15 per cent (n=6) of respondents were unimpressed by the concept of a 'professional day' which included preparation and writing-up time. They commented that preparation and writing up took far more time than the hearing itself. 17 per cent (n=7) said the decisions of what should reasonably be included within that day should be decided by the President of the Chamber and not the Tribunals Service.

**Question 5:**

16. 31 per cent commented on question 5: 26 responses were received. 69 per cent (n=18) agreed with the proposal that a divisor of 220 days should be applied to the salary of a post to calculate the daily fee. 31 per cent (n=8) agreed with the concept of a divisor which took into account sick pay and pension allowance, paid to salaried judges and members of the Courts Service judiciary: they cited a divisor of 215 days as appropriate.

***Questions relating to fee paid medical members*****Question 6:**

17. 29 per cent commented on question 6: 24 responses were received.

**Question 6a**

18. 42 per cent (n=10) agreed that medical members' remuneration should be linked to the cost of any locum cover. 33 per cent (n=8) disagreed this should be paid for. The majority of these respondents agreed that medical members should be paid the same regardless of what personal arrangements they made to accommodate their professional and personal lives. 25 per cent (n=6) neither agreed nor disagreed.

**Question 6b**

19. 29 per cent (n=7) agreed with the proposal that if medical members undertaking tribunal work do so at a loss after covering locum cost, the locum cost should be covered by the Tribunals Service. 46 per cent (n=11) disagreed with the proposal, that it would be open to abuse and in turn lead to resentment and poor morale amongst members. 25 per cent (n=6) neither agreed nor disagreed.

**Question 6c**

20. 50 per cent (n=12) agreed that a further fixed sum should be added to the amount paid to medical members undertaking tribunal work and that the rate should compare favourably with those available in the private sector, also that the rate had to be attractive to applicants who may be considering taking up a judicial post. 25 per cent (n=6) disagreed, stating that there were no plausible justifications why doctors

should be paid additional fees. Another 25 per cent (n=6) neither agreed nor disagreed.

**Question 7:**

21. 29 per cent (n=24) commented on question 7: 63 per cent (n=15) of respondents agreed with the proposal to vary the rate of pay which took account of exceptional circumstances where there was evidence of recruitment and retention difficulties caused by pay related issues. 38 per cent (n=9) disagreed with the proposal on the grounds that it would be wrong to wait until recruitment difficulty occurred before tribunal members are properly remunerated. They professed that to do this would discourage the right calibre of applicants applying for judicial posts.

*Questions relating to posts under the new tribunals system*

**Question 8**

22. 13 per cent (n=11) commented on question 8.

**Question 8a**

23. 82 per cent (n=9) agreed that the office of the Senior President should be placed in salary group 2 because the post was likely to be held by an office holder with similar responsibilities to that of the Lord Justice of Appeal. One respondent said that if the post was to be held on a part-time basis it would not be appropriate to raise it to salary group 2. The remaining respondent did not comment on the proposal.

**Question 8b**

24. 27 per cent (n=3) agreed that the Chamber Presidents should be placed in salary group 5, but disagreed that those without management responsibilities should be placed in salary group 6.1. They gave the reason that they could not envisage a Chamber President without management responsibilities. Another 27 per cent (n=3) disagreed with the proposal on the grounds that the post was likely to be presided over by a High Court Judge (and therefore in salary group 4): thus the salary group for the post should be salary group 4 or above. 45 per cent (n=5) gave no specific comment on the proposal save that the appropriate salary for Chamber President and Deputy

Chamber Presidents should await clarification from the Tribunals Service before any decisions were made as to their salary group.

**LIST OF THOSE WHO RESPONDED TO THE CONSULTATION  
DOCUMENT AND THOSE WHO PROVIDED ORAL EVIDENCE**

**Tribunals**

Appeals Tribunal  
Asylum and Immigration Tribunal  
Asylum Support Tribunal  
Child Support Appeals  
Competition Appeal Tribunal  
Criminal Injuries Compensation Appeals Panel  
Employment Appeals Tribunal  
Employment Tribunal  
Employment Tribunal Scotland  
Finance and Tax Tribunal  
Lands Tribunal  
Mental Health Review Tribunal  
Pensions Appeal Tribunals  
Social Security Child Support Appeals  
Special Education Needs and Disability Tribunal (SENDIST)  
VAT and Duties Tribunals

**Representative Bodies**

Association of District Chairmen  
Association of District Judges England & Wales  
Association of Financially Qualified Panel Members  
Association of Members of the Asylum and Immigration Tribunal  
Council of Circuit Judges  
Council of Employment Judges and Industrial Tribunal Chairmen (CETCH)  
Council of Employment Tribunal Members Association (CETMA - NLMs (GB))  
Council of Immigration Judges  
Criminal Injuries Compensation Appeals Panel (CICAP)  
Designated Immigration Judges  
Employment Appeals Tribunal (EAT) Lay members Committee  
Fee Paid Adjudicators  
Full-time Judiciary of Finance and Tax Tribunal  
Pensions Appeal Tribunal (PAT) Medical Members  
Regional Chairmen (Social Security and Child Support Appeals Tribunal)  
Regional Employment Judges  
Senior Immigration Judges (SIJ)  
Social Security Commissioners  
Special Education Needs and Disability Tribunal members

**Judiciary**

The Lord Chief Justice  
Lord Justice Carnwath  
The Hon. Mr Justice Hodge OBE  
His Honour Judge Hickinbottom  
His Honour Judge Lyons  
His Honour Judge Martin  
His Honour Sir Michael Harris  
Her Honour Audrey Sander  
District Judge Michael J Walker

**Respondents**

Andrew D Anderson  
Dr N E Baldock CBE  
George Bartlett QC  
Colin Bishopp  
Dr Philip Brown  
Jessica M Burns  
Mr Hugh Cannell  
John Clark  
Mr Colledge  
Dr HMG Concannon  
Beata Connell  
Edward Cousins  
Lesley Cunningham  
Dr Ian Daniels  
Russ De Haney  
Nanci Downey  
Gillian Downham  
Tom Drysdale  
Derek Evans  
Dr Malcolm D Eve  
Joanne Finlay  
Dr Jane Ford  
Roger Goodier  
Aideen Grace  
Lawrence Guyer  
Olga Harper  
Lady Rosemary Hughes  
Mr Kenneth Hunter  
Dr James Jenkins  
Dr Frank Jones  
Professor Michael Jones  
Peter King  
D J Latham  
Andrew Lloyd-Davies  
Mr George Lodge  
Roger Lucking  
Jon Mallender

Michael Mark  
B T McArdle  
Colin Milne  
Carole Mitchell  
John J Molly  
Linda Montague  
Dr Patricia A Moultrie  
Dr N J Nathan  
John Nicholson  
Rory O'Kelly  
Guy Otten  
John C Parker  
Dr U Pati  
Ann Ramsay  
Owen Rhys  
Jon Rosser  
Ann Ruff  
Derek Searby  
Paul Shaerf  
Dr Stefan D Slater  
A P Smith  
Sehba Haroon Storey  
Jeremy Straker  
Martha Street  
Mr MG Taylor, CBE  
Dr Michael Townsend  
Robin Weare  
Owain Rhys Williams  
Andrew Wilson  
John Wilson  
Hillary Wolfenden  
Professor R A Wood  
Edward Woodcraft  
Ian Younger  
Mr Kuruvilla K Zachariah

**Others**

Judicial Appointments Commission (JAC)  
Her Majesty's Land Registry (HMLR)  
Royal Courts of Justice (RCJ)  
Tribunals Service (TS)

S T A T U T O R Y I N S T R U M E N T S

2008 No. 2692

TRIBUNALS AND INQUIRIES

The Qualifications for Appointment of Members to the  
First-tier Tribunal and Upper Tribunal Order 2008

<i>Made</i>	<i>5th October 2008</i>
<i>Laid before Parliament</i>	<i>15th October 2008</i>
<i>Coming into force</i>	<i>3rd November 2008</i>

The Lord Chancellor, with the concurrence of the Senior President of Tribunals, makes the following Order in exercise of the powers conferred by paragraph 2(2) of Schedule 2 and paragraph 2(2) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007<sup>(1)</sup>.

1. This Order may be cited as the Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008 and shall come into force on 3rd November 2008.

2.—(1) A person is eligible for appointment as a member of the First-tier Tribunal or the Upper Tribunal who is not a judge of those tribunals if paragraph (2), (3) or (4) applies.

(2) This paragraph applies to a person who is—

- (a) a registered medical practitioner;
- (b) a registered nurse;
- (c) a registered dentist;
- (d) a clinical psychologist;
- (e) an educational psychologist;
- (f) a pharmacologist;
- (g) a veterinary surgeon or a veterinary practitioner registered under the Veterinary Surgeons Act 1966<sup>(2)</sup>;
- (h) a Member or Fellow of the Royal Institution of Chartered Surveyors; or
- (i) an accountant who is a member of—
  - (i) the Institute of Chartered Accountants in England and Wales;
  - (ii) the Institute of Chartered Accountants in Scotland;
  - (iii) the Institute of Chartered Accountants in Ireland;
  - (iv) the Institute of Certified Public Accountants in Ireland;
  - (v) the Association of Chartered Certified Accountants;
  - (vi) the Chartered Institute of Management Accountants; or
  - (vii) the Chartered Institute of Public Finance and Accountancy.

(3) This paragraph applies to a person, other than a registered medical practitioner, who is experienced in dealing with the physical or mental needs of disabled persons because they—

- (a) work with disabled persons in a professional or voluntary capacity; or
- (b) are themselves disabled.

(4) This paragraph applies to a person who has substantial experience—

- (a) of service in Her Majesty's naval, military, or air forces;
- (b) of educational, child care, health, or social care matters;
- (c) of dealing with victims of violent crime;
- (d) in transport operations and its law and practice;
- (e) in the regulatory field;
- (f) in consumer affairs;
- (g) in an industry, trade or business sector and the matters that are likely to arise as issues in the course of disputes with regulators of such industries, trades or businesses;
- (h) in tax matters and related tax procedures;
- (i) in a business, trade or not-for-profit organisation.

Signed by the authority of the Lord Chancellor

*Bridget Prentice*  
Parliamentary Under Secretary of State  
Ministry of Justice

15th October 2008  
I concur,

*Robert Carnwath*  
Senior President of Tribunals

15th October 2008

**EXPLANATORY NOTE**  
*(This note is not part of the Order)*

This Order sets out the qualifications or experience that a person must have in order to be eligible for appointment as a member of the First-tier Tribunal or Upper Tribunal who is not a judge of the tribunal.

(1)  
[2007 c. 15. Back \[1\]](#)

(2)  
1966 c. 36. [Back \[2\]](#)

## APPENDIX E

### PREVIOUS REVIEW BODY REPORTS ON RELEVANT MATTERS

No. 2: Interim Report on Top Salaries	Cmnd. 5001, June 1972.
No. 3: Second Interim Report on Top Salaries	Cmnd. 5372, July 1973.
No. 4: Third Interim Report on Top Salaries	Cmnd. 5595, June 1974.
No. 6: Report on Top Salaries	Cmnd. 5846, December 1974.
No. 10: Second Report on Top Salaries	Cmnd. 7253, June 1978.
No. 11: Third Report on Top Salaries	Cmnd. 7576, June 1979.
No. 14: Fourth Report on Top Salaries	Cmnd. 7952, July 1980.
No. 16: Interim Report on Top Salaries	Cmnd. 8243, May 1981.
No. 18: Fifth Report on Top Salaries	Cmnd. 8552, May 1982.
No. 19: Sixth Report on Top Salaries	Cmnd. 8879, May 1983.
No. 21: Seventh Report on Top Salaries	Cmnd. 9254, June 1984.
No. 22: Eighth Report on Top Salaries	Cmnd. 9525, July 1985.
No. 23: Ninth Report on Top Salaries	Cmnd. 9785, May 1986.
No. 25: Tenth Report on Top Salaries	Cm 128, April 1987.
No. 27: Eleventh Report on Top Salaries	Cm 359, April 1988.
No. 28: Twelfth Report on Top Salaries	Cm 581, February 1989.
No. 29: Thirteenth Report on Top Salaries	Cm 938, February 1990.
No. 30: Fourteenth Report on Top Salaries	Cm 1413, January 1991.
No. 33: Fifteenth Report on Top Salaries	Cm 2015, July 1992.
No. 34: Sixteenth Report on Senior Salaries	Cm 2464, February 1994.
No. 35: Seventeenth Report on Senior Salaries	Cm 2764, February 1995.
No. 37: Eighteenth Report on Senior Salaries	Cm 3094, February 1996.
No. 39: Nineteenth Report on Senior Salaries	
Volume I	Cm 3540, February 1997.
Volume II	Cm 3541, February 1997.
No. 40: Twentieth Report on Senior Salaries	Cm 3837, January 1998.
No. 41: Twenty-First Report on Senior Salaries	Cm 4245, February 1999.
No. 45: Twenty-Second Report on Senior Salaries	Cm 4567, February 2000.
No. 46: Twenty-Third Report on Senior Salaries	Cm 4995, February 2001.
No. 51: Twenty-Fourth Report on Senior Salaries	
Volume I	Cm 5389-I, February 2002.
Volume 2	Cm 5389-II, February 2002.

No. 55: Twenty-Fifth Report on Senior Salaries	Cm 5718, February 2003.
No. 56: Twenty-Sixth Report on Senior Salaries	Cm 6099, February 2004.
No. 59: Twenty-Seventh Report on Senior Salaries	Cm 6451, February 2005.
No. 62: Twenty-Eighth Report on Senior Salaries	Cm 6727, March 2006.
No. 63: Twenty-Ninth Report on Senior Salaries	Cm 7073, March 2007.
No. 65: Thirtieth Report on Senior Salaries	Cm 7388, June 2008.