

**Review Body on Senior Salaries
Major Review of the Judicial Salary Structure – call for
evidence document**



**A response by the Association of Personal Injury Lawyers
February 2018**

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a history of over 25 years of working to help injured people gain access to justice they need and deserve. We have over 3,400 members committed to supporting the association's aims and all of which sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

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Introduction

APIL welcomes the opportunity to respond to the Review Body on Senior Salaries call for evidence on the Judicial Salary Structure. Although most of the consultation is outside of our remit, we recognise the importance of having a strong and skilled judiciary, and set out our views on how this could be best maintained in the future.

Q15 How important is a suitably staffed and skilled judiciary and what are the impacts of failing to recruit a sufficient number of suitably qualified individuals to judicial roles?

Career path, pay and conditions

A suitably staffed and skilled judiciary is vital for the smooth administration of justice. We strongly recommend that as part of this review, there must be a wider consideration of how judges are recruited, and a focus on creating a judicial career path in the long term. If those who had perhaps 5-10 years' experience in private practice could apply for full time roles as a judge, with the appropriate training to develop their career in this way, this would make the position more attractive. At present, those who are judges tend to be older barristers looking to retire from the Bar. If there was a judicial path that practitioners could join earlier on in their careers, with the promise of specialist training and development as a judge, this may go some way towards attracting, and retaining, more candidates. The salary offered should also reflect the ability and experience of the officer holder, and should ideally reflect that offered in the private sector to attract a sufficient number of suitably qualified candidates.

Specialism

One factor which may encourage people to considering judicial roles is not only a focus on developing a career as a judge, but allowing those who choose to take up this career path to specialise as a judge hearing certain types of case. The experience in Scotland has been that most practitioners who go on to the High Court bench now almost exclusively deal with criminal work, dealing with the back log of historic child sexual abuse cases – despite those judges being from a variety of specialisms. The distressing nature of the most common cases heard by High Court judges has been cited as one of the potential reasons for the judicial recruitment crisis in Scotland¹. As part of the judicial career path, there should be an opportunity for candidates to train and undertake continuous professional development in a specialist area. This will help to re-establish the role of a judge as a prestigious career choice, rather than simply an alternative option for otherwise retirees of the legal profession, which some may see it as at present.

Not only will allowing judges to specialise ensure that the best candidates are attracted and retained, APIL maintains that a system of ticketing, with judges hearing cases that they are specialist (or at least have training) in, will go a long way towards reducing cost and delay in the justice system. Specialist judges will ensure that justice is done, as they clearly understand the issues and can make a sound judgment based on the evidence before them. For example, in the personal injury sector, it is important that judges hearing personal injury cases understand the implications of injuries of differing type and severity. They also need to understand the interface between injured claimants and the public sector, e.g. the NHS, local

¹ <http://www.scottishlegal.com/2017/08/11/scotland-is-facing-a-judicial-recruitment-crisis/>

authorities, Department for Work and Pensions, and the mechanics of the different systems. Judges specialised in personal injury would also have a thorough knowledge of the Rehabilitation Code and the Guide to the Conduct of Cases Involving Serious Injury, which are peculiar to personal injury cases. A specialist judge hearing the case will be alive to the need to case manage the litigation to balance compensation and rehabilitation. If this balance is not achieved (which is more likely should the judge not be experienced in this sector), the burden will be put back on society in terms of the impact on public sector spending through the NHS, local authority funding and benefits provision. Rehabilitation, where available, also has a potentially positive benefit in terms of the generation of tax by getting injured claimants back to work.

The benefits of a specialist judiciary would not just be felt in the personal injury sector. Judges with specialist knowledge of the cases that they are hearing will be able to deal with those cases much more quickly and efficiently. With issues of backlogs, delays and the Government looking to save money in the court system, a specialist judiciary will save valuable court time.

Adequate support

The idea of a “suitably staffed” judiciary also extends to ensuring that there is adequate administrative support and resource for judges to carry out their role effectively. It is vital that there are staff in place supporting the judiciary’s work, and that there are adequate resources to ensure that the staff can carry out their role properly.

At present, a lack of adequate resources is being felt across the court estate. In response to the proposed closure of Wandsworth County Court for example, members have highlighted that the courts earmarked to take the workload of Wandsworth are already unable to cope with their current workload. Members report forms going missing, phones going unanswered, and hearings being listed, only for there to be no record of the hearing being listed on the day. This leads to a lack of trust and confidence in the justice system.

The court infrastructure and IT provision must also be of sufficient quality. While there is an aspiration for the court service to be modernised, the concern is that the pace will be too slow and the allocated budget for the reform programme inadequate. Lack of state of the art facilities will only lead to delay, adjournments, frustration and loss of morale in comparison to what is available in the private sector. Investment in attracting younger experienced professionals with promise of career development and a salary reflective of the skills required will be lost if the equipment used in the public sector falls far short of that used in the private sector.

Impacts of failing to recruit a sufficient number of suitably qualified individuals to judicial roles

If judges are not suitably qualified, one of the most obvious impacts is that cases will be wrongly decided, leading to injustice. In the absence of suitable and skilled candidates, the standard of decision making suffers, which inevitably leads to an increase in the number of cases going to appeal, thus taking up already scarce resources.

Experience in Scottish jurisdiction

Q13) What policy changes or reforms to the justice system since 2011, in which jurisdictions, have affected the nature and content of judicial roles and what impacts has this had? What impact will future planned changes have?

As above, we support the need for specialism within the judiciary. Since 2015, there has been a specialist personal injury court in Scotland. There are a number of lessons to be learnt from the Scottish jurisdiction in relation to specialism. One of the main problems experienced in Scotland since the introduction of the personal injury court is the lack of full and proper administrative resource. This has caused delays, though is currently being addressed.

There must also be a mechanism in place to ensure that there is consistency in decision making. A large proportion of court time can be wasted if two sheriffs arrive at two different conclusions in relation to the same issue. There must be a set pattern of decision making, and proper communication between judges to avoid this. In Scotland, there are six specialist sheriffs in the personal injury court, one of whom is the administrative sheriff, in charge of ensuring the smooth running of the court and to co-ordinate judicial decision making. A Court Users group, consisting of sheriffs, court clerks, solicitors and counsel, meet on a regular basis to discuss issues. This represents a pragmatic way to ensure best practices. Another way of ensuring consistency is to properly resource the Judicial College, to ensure those making the decisions are taught consistently.

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