



intergenerational foundation

Fairness for Future Generations

A response from the Intergenerational Foundation to the public consultation on judicial pension reform

Who we are...

The Intergenerational Foundation (www.if.org.uk) is a think tank which researches fairness between the generations in the UK, in order to protect the interests of younger and future generations, who are at risk of being ignored by current policy-makers.

Our response...

IF is concerned about the scale of the burden which the New Judicial Pension Scheme 2015 (NJPS 2015) places on taxpayers, both those who are alive today and future generations who will inherit significant financial liabilities. We feel that the reforms represent a missed opportunity that could have been used to undertake a much more significant overhaul of the pension arrangements for the judiciary, creating a new system that would be fair to judges and taxpayers alike while also placing them on sustainable financial footing for the future. IF would particularly like to comment upon the following points:

Liabilities for future generations

IF's biggest concern is that the NJPS 2015 will still create significant liabilities which future generations will be expected to pay off, as once members of the judiciary retire their pension benefits are protected for life. The current judicial pension scheme's liabilities were actuarially assessed to be worth over £3.5 billion at March 2013, a cost which will be borne almost entirely by the taxpayer in one way or another, because the scheme's beneficiaries make very low personal contributions.¹ Although member contributions will be somewhat higher under the NJPS 2015, the fact that it will continue to be based on an unfunded, defined-benefit model means that it will still be creating liabilities for the taxpayer stretching into the future.

Although the size of the existing pension scheme's current liabilities may appear to be relatively small in the context of total unfunded public sector pension liabilities (which are officially estimated at £1.1 trillion), the judicial pension scheme operates in a unique context, which makes this burden especially difficult to justify. The judicial pension scheme is small, with only 2,200 active members and 1,829 current pensioners, and its members enjoy some of the most generous salaries and pensions that are available anywhere across the public sector: the scheme's accounts show that the typical active member currently has an average salary of over £118,000, while the typical current pensioner receives an annual pension income of more than £50,500.²

¹ Judicial Pension Scheme (2013) *Judicial Pensions Scheme Annual Report and Accounts 2012-13* London: Ministry of Justice

² Ibid.

It is obvious that the judiciary represents a small elite of highly skilled, extremely well-paid professionals. This places the judicial pension scheme in marked contrast to many of the other defined benefit pension schemes that operate across the public sector – which often contain large numbers of low-paid members who perform relatively menial tasks, such as hospital porters and school caretakers. The point of this comparison is that paying for unfunded public sector pension schemes is ultimately a form of redistribution from the general taxpayer to these workers, and the redistributive role of these schemes is somewhat easier to justify when many of the beneficiaries are relatively low-paid. It is far less clear why low-income taxpayers should be expected to subsidise extremely generous pension arrangements for some of the highest-paid professionals in the country, which is effectively the transfer that the judicial pension scheme facilitates. IF believes it is a shame that the redistributive impacts of the judicial pension scheme have not received more attention during the current reforms. Although the NJPS 2015 should be less redistributive because pensions will be calculated on a career average basis, the pensions which it provides will still be among the most generous in the public sector. Reducing the redistributive impact of the pensions which are offered to the judiciary would have required a more radical vision, such as establishing a new scheme that was fully-funded, or capping the overall level of pension that a retired member of the judiciary is allowed to receive from the scheme.

Transitional and tapering protection

IF is also concerned that the way in which the new NJPS 2015 is being introduced is unfair to both taxpayers and younger members of the judiciary. As the consultation document makes clear, all members of the existing judicial pension scheme who are within 10 years of the normal retirement age at 65 will have their existing benefits preserved intact under so-called “Transitional Protection”. Members of the existing scheme who are within 13.5 years of retirement age will also be eligible for “Tapering Protection”. The impact of both of these transitional arrangements will be to shield the older members of the current scheme from bearing the brunt of the changes being brought in under the reformed scheme, while younger members of the judiciary will receive less generous pension arrangements for the whole of their careers.

Although similar arrangements have been put in place for other public sector pension schemes, the discriminatory impact of transitional protection is exacerbated by the unusual age structure of the judiciary. Members of the judiciary are often appointed at a relatively advanced age – for example, of the ten judges who were appointed to the High Court between 1 October 2013 and 31 March 2014, four were aged 46–55 and five were aged 56–65 (the age of the remaining judge was unknown).³ As many members of the judicial pension scheme only join it at around the age of 50, the transitional protection arrangements may well enable the majority of the scheme’s current members to retire with their existing pension benefits fully intact. This means that most of the current liabilities will still have to be borne by younger and future generations, while it could also be argued that current older members have obtained excessively favourable protection for their current benefits at the expense of their successors. The sacrosanct status of

³ Judicial Appointments Commission (2014) *Judicial Selection and Recommendations for Appointment Statistics, October 2013 to March 2014* London: Judicial Appointments Commission

previously accrued benefits under the new scheme seems harder to defend in the case of the judiciary than it is for other public sector pension schemes because of the extremely generous nature of the benefits involved and the wealthy status of the beneficiaries. It is also worth emphasising that members of the judiciary did not have to make any personal contributions towards the cost of their own pensions until 2011, so the argument that accrued rights should be protected because individual members have already paid for them clearly does not apply. IF would have preferred it if the recognition of accrued benefits had been subject to a cap in order to reduce the burden of redistribution that is being placed on younger and future generations of taxpayers.

Contribution levels

Finally, IF is concerned that the amount which members of the judiciary will be expected to pay towards their pensions under the NJPS 2015 does not reflect the real cost of providing them, creating a greater burden for the taxpayer. Although members of the current scheme have been expected to make personal pension contributions since 2011, someone who earns the average member's salary of £118,000 will still only be contributing 7.35% of pensionable pay per year. This seems like an extremely modest contribution to be paying towards pension benefits which it has been estimated are typically worth 35–40% of salary.⁴

Employers (i.e. the taxpayer) on the other hand will be paying contributions which are worth 39.7% of pensionable pay. This is much more generous than the level of employer contributions which are typically made in the private sector: ONS figures show that average employer contributions into defined benefit pension schemes are only worth 14.2% of salary, while for defined contribution pensions (which are now the only kind that most private sector workers have available to them) the average employer pays just 6.6%.⁵ It is also worth pointing out that the contribution levels paid by members of the judiciary do not reflect the cost of purchasing equivalent pensions privately. In order to retire at 65 on a pension that provides survivor benefits and automatically adjusts to keep pace with inflation, a buyer in the private sector would currently have to accept an annuity rate as low as 3.5%, which means they would need to have saved up a personal pension fund worth roughly £1.5 million. Given how highly paid most members of the judicial pension scheme are, and the generosity of the benefits they are expecting to receive when they retire, it does not seem unreasonable that they should be expected to make a bigger personal contribution towards their cost in order to place less of a burden on younger and future generations of taxpayers.

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For more information about the Intergenerational Foundation and its work, please visit www.if.org.uk or contact Liz Emerson, Co-Founder at liz@intergenerational.org.uk.

⁴ Rozenberg, Joshua (2012) "Judicial pensions: will judges take Chris Grayling to court?" *The Guardian* 28 September 2012

⁵ ONS (2013) *Pension Trends Chapter 8: Pension Contributions, 2013 edition* Newport: ONS