UK ASSOCIATION OF FEE PAID JUDGES

RESPONSE TO MANDATORY RETIREMENT AGE CONSULTATION PAPER

1. We are writing with the response of the UK Association of Fee-Paid Judges to the mandatory retirement age consultation paper.
2. Notwithstanding the title of the Association, it is appropriate to note that our members are based almost entirely in England and Wales. Also that we do not represent those who are purely tribunal judges or magistrates, who have their own associations.
3. The case for increasing the mandatory retirement age (‘MRA’) seems compelling.
4. In particular, people are in general now living for longer, and indeed remaining active and working for longer. The contribution that people can make at an age to which people did not previously generally work has been recognised in society as a whole. A cut-off point of 70 years of age deprives the judiciary not only of resources in the form of judges beyond this age who are capable of carrying on and wish to do so, but also of those most experienced in life, as well as, in many cases, on the Bench.
5. Given that those in the higher levels of both branches of the legal profession have been, and are, becoming ever more balanced in numbers in terms of sex, ethnicity, and backgrounds, as in turn are the more recently appointed judiciary, the retention of older judges with a concomitant need to recruit fewer new judges may be thought likely to cause a slight delay in the diversification of the Bench.
6. This is a legitimate point to consider.
7. However, first, there remains a lack of sufficient applicants to fill places required to meet work demands at High Court, Circuit, and District Bench levels, the filling of which by the extension of the MRA will not impact on the ability to recruit from the more diverse pool.
8. Second, going beyond this, any relatively small effect on diversity would be likely to be outweighed by the fact there will not be age discrimination by reason of what is now a relatively low MRA, depriving older judges and society of the opportunity to continue to use the skills and experience they have built up.
9. Furthermore, though not mentioned in the consultation paper, there would seem to be more opportunity for women who have deferred their careers for childcare or other reasons (as happened more in the past than will be the case with more recent entrants to the legal profession) to join the bench if the MRA is raised. This is because they will be able to join the bench after building up their legal careers, at a later age which still allows for a reasonable period of service before retirement (which is required of all applicants for appointment, as well as to be expected by most if they are to put themselves through the rigors of the appointments process).
10. In addition, others who are suitable for full-time appointment but would not be able or willing to apply because a reasonable period of service would not be available to them by reason of the MRA, are also currently cut out of consideration - notwithstanding the value of the contribution they could make - by what may be thought to be the current relatively low MRA dating from a time when life expectancy was lower and age viewed differently.
11. Overall, raising the MRA to 75 appears appropriate. Alternatively, we consider it should be raised to 72.
12. The MRA should be raised, if it is to be, throughout the courts judiciary generally if at all. To raise it just for the magistracy, to allow for extension of appointments past the present MRA, based on an acute need for magistrates as compared with other judges, would be an unprincipled expediency as compared with a principled extension of the MRA for the judiciary as a whole.
13. In response to some of the specific questions raised in the consultation paper (which relate to those concerned with judges):

Q1A and 1B, 2A and 2B – A proportion of judges would be likely to choose to stay in office if the MRA was raised to 72, and more too if it was raised to 75. Paragraphs 8 and 9 above are highlighted, in addition to which those who are appointed in their ‘50s or 60s who are good at their job, and therefore enjoy it, may well wish to carry on doing it to 72 or 75 if they wish to do it still at 70. Those who are not in that category are likely to retire still at a lower age. Those who retire before the age of 70 seem likely still to do so.

Q3A and 3B – see paras 5 to 9 above.

Q4A and 4B – there would seem no reason why the points made above should not apply equally to JOHs with specific protected characteristics, a proportion of whom who would be likely also to stay in office beyond the age of 70 if able to do so.

Q5A and 5B – Increasing the MRA would seem likely to attract more people to apply to be judges as it simply enables them to stay in office longer if they wish to, and so gives them an assurance of greater flexibility if they are considering joining the judiciary. Those applying for salaried positions would also have the chance to extend their working life in the same way as in professional practice where there are no universal cut off age points.

Q6A and 6B – see in particular paragraphs 8 and 9 above.

Q7A and 7B – No. Some of the best and most experienced legal minds, with the best honed judicial skills, are cut off at the age of 70 with a great loss to the judiciary. There is also balance in that some judges are being appointed now at a younger age than before, as well as, if the MRA is raised to 75 (or 72) some older judges being on the bench than previously. At whatever age people are sitting they are expected to perform satisfactorily as a pre-condition of continuing to do so, but most people are capable of recognising if they are not able to do so.

Q11 – yes: for the reasons set out above.

Q12 - 75 (or otherwise, 72), for the reasons set out above

Q13 – No: there should be a principled approach, for the reasons set out above.

Q14 – No (with the one exception of being able to finish off any reserved matters): there should be a principled approach, as set out above.

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