



10 DOWNING STREET

THE PRIME MINISTER

22 February, 1984

de RM

c. Hunt  
no  
co.

Dear Lord Chief Justice,

Thank you for your letter of 14 February and for sending me a copy of the memorandum which you and Heads of Division submitted to the Sub-Committee of the TSRB which is considering relativities within the Judicial Salary Structure. My colleagues and I fully recognise the need to maintain the quality of the judiciary and I have, therefore, noted the points made in your letter. I can assure you they will be taken into account when Ministers come to consider the recommendations of the TSRB.

Yours sincerely  
Margaret Thatcher

The Right Honourable the Lord Chief  
Justice of England

✓

PRIME MINISTER

I have cleared this reply with the Lord Chancellor's Office, Treasury and Cabinet Office. The universal response was that the quality of argument fell some way short of what could be expected from our finest legal minds. In particular, the evidence on recruitment relates to 1975-82, thereby taking no account of the large increases in salary granted in the last round. It must in any case be doubtful whether the salaries of judges could or should match the earnings of those at the very top of the barristers' profession. Furthermore quite <sup>ex</sup>cessive importance is attached to small movements in the ratio of the salaries of High Court <sup>and</sup> Circuit judges. Finally, the argument that High Court judges should be paid more when some of their workload has been transferred to the Circuit Bench seems pretty unconvincing.

Address as "Dear Lord Chief Justice".

AT

21 February, 1984



10 DOWNING STREET

Andrew

Margaret O'Mara phoned  
on Friday night about  
letter to Hd Chief  
Justice re Judicial  
Salaries.

Their only comment  
is that perhaps the  
last 10 words of the  
last sentence should  
be deleted, as they  
may suggest something  
will be done in 84.

Nicky  
17/2

CONFIDENTIAL



KUE

RW

Rf

10 DOWNING STREET

*From the Private Secretary*

15 February, 1984

The Prime Minister has received the attached letter from the Lord Chief Justice, together with a copy of the memorandum which he and Heads of Divisions submitted to the Sub-Committee of the TSRB which is considering relativities within the Judicial Salary Structure. The letter does not appear to have been copied to the Lord Chancellor. I attach a draft of a letter which the Prime Minister might send. If you have any comments on this or any observations to make before I put these papers to the Prime Minister I would be interested to receive them. Could these please reach me by the end of the week.

I am copying this letter to John Kerr (HM Treasury) and Peter Gregson (Cabinet Office).

(A. Turnbull)

R. Stoate, Esq.,  
Lord Chancellor's Office

CONFIDENTIAL

RW

DRAFT LETTER FOR THE PRIME MINISTER TO SEND TO THE LORD CHIEF JUSTICE

Thank you for your letter of 14 February and for sending me a copy of the memorandum which you and Heads of Division submitted to the Sub-Committee of the TSRB which is considering relativities within the Judicial Salary Structure. I and <sup>and I</sup> My colleagues fully recognise the need to maintain the quality of the judiciary and I have, therefore, noted the points <sup>made in your letter.</sup> you have made ~~about recruitment.~~ I can assure you <sup>they</sup> ~~that these~~ ~~points~~ will be ~~fully~~ taken into account when Ministers come to consider the recommendations of the TSRB.



ROYAL COURTS OF JUSTICE,

LONDON, WC2A 2LL

14 February 1984

My dear Prime Minister,

JUDICIAL SALARIES

Two years ago I felt impelled to write to you with regard to the levels of judicial salaries, which I and other Heads of Divisions were convinced were so low as to prejudice recruitment of the best to the High Court Bench. (My letter of 2 April 1982 and your reply of 7 April 1982 refer.)

The increases which followed and your observations in the House when announcing the increases gave us all great comfort, because they seemed to indicate not only that progress had begun but also that it would be continued.

I write again now, because my concern about recruitment has been confirmed by figures released by the Lord Chancellor's Department. These show that in the period from 1975 to November 1982 no less than 20% of those offered High Court appointments either refused or requested postponements. There were in the period sixty-seven appointments and fourteen refusals or requests for postponements. It therefore follows that of the sixty-seven appointed fourteen were not first choices. I am sure that you will, as I do, regard this as being intolerable.

The increases recommended last year were disappointing both in their amount and the fact that they came in two instalments neither of which was back-dated. This was no doubt due to a feeling that the case for favourable financial treatment of the higher judiciary was insufficient to outweigh political considerations. However, now that figures have for the first time been made available, I venture to suggest that the case for bold action to secure the highest quality judiciary for the future is unanswerable. That you will yourself regard the fact that fourteen out of sixty-seven appointments were second choices as unacceptable I do not for one moment doubt. I venture to hope that the Government as a whole will not be so overborne by short term financial considerations and fear of criticism that they will take a different view.

In order that you may be apprised of the current views of all Heads of Divisions I enclose a copy of a joint memorandum dated 7 December 1983 which we submitted to a sub-committee of the T.S.R.B. which is considering relativities within the Judicial Salary structure. I draw particular attention to paragraphs 5, 8 and 9.

Yours sincerely,

The Rt Hon Mrs Margaret Thatcher PC MP  
10 Downing Street  
LONDON SW1

Geoffrey Lane

2.4.82  
on Part 4

44  
PPS



ROYAL COURTS OF JUSTICE  
STRAND, LONDON, WC2A 2LL

7 December 1983

JOINT MEMORANDUM

From:

The Lord Chief Justice  
The Master of the Rolls  
The President  
The Vice Chancellor

To:

Sir Thomas Skyrme's Sub  
Committee on relativities  
within the Judicial Salary  
Structure.

1. On all previous occasions the relationship between the High Court Judge and the Circuit Judge has been accepted as being the key relationship within the judicial structure. It has also been repeatedly stated that the salaries in the two posts are the bench marks in the creation of the structure. Finally, it was stated in paragraph 19 of Sir George Coldstream's Sub-Committee's Report in 1981 (Appendix D to Report No.16) that "it is essential that the weight and importance of the work of the High Court Judge should be adequately recognized by the position of the appointment in the structure". That sub-committee recommended a substantial improvement in the position of the High Court Judge relative to all groups below. This was, it appears, due to some extent to evidence that recruitment to the High Court Bench had become difficult, partly because the position of the appointment in the structure had become depressed.

2. It is still true that the salaries in the two appointments must be the bench marks in any salary structure, that the relationship between them is the key relationship, and that the difference between the two appointments must be adequately recognized. The differential should, however, be the product of the salaries for the two appointments rather than something which is arrived at independently and then used to arrive at such salaries. If the salaries initially thought to be appropriate produce a differential which does not adequately



recognize the importance of the position of the High Court Judge in the structure, this merely shows that one or other of the two bench mark salaries is wrong. Either the Circuit Judge's salary proposed is too high or the High Court Judge's salary is too low. The history of the matter suggests that the latter is normally if not invariably the case.

3. That history is of considerable interest. In setting it out, the differentials between the two salaries at various times will be stated by expressing the salary of the Circuit Judge as a percentage of the salary of the High Court Judge rather than in terms of a ratio.

At the time of Report No.6 (1974) the percentage in existence was 63.3. Lord Beeching's Advisory Group recommended 60% which would increase the differential, and the salaries recommended in Report No.6 to operate as from 1 January 1975 produced a figure of 61.9%. Those salaries were respectively £21,000 and £13,000. By January 1st 1978, however, the salaries in payment were respectively £18,883 and £13,208. Despite the recommendation for an increased differential in Report No.6 the differential had thus, without any recommendation, been markedly reduced: for the percentage had gone up to 69.9%.

Report No.10 contains in Appendix J the report of Sir George Coldstream's first Sub-Committee. It considered that a closer relationship than resulted from the recommendations in Report No.6 was appropriate as a result of the development of the work of the Circuit Bench, and recommended 66.2%. The salaries in fact recommended in Report No.10 produced 67%. This percentage was slightly raised by the recommendation in Reports No.11 and 14, but in 1981 in Report No.16 came the recommendation by the Sub-Committee for an increase in the differential by lowering the percentage to 62.5%. This recommendation was not then acted upon by the T.S.R.B., who restricted themselves to urging the Government to implement fully the recommendations which had been made in report No.14 which had produced a percentage figure of 68.5.

In 1982, however, Report No.18 recommended salaries which produced a differential of 64.4% as against the 62.5% recommended by Sir George Coldstream's Sub-Committee. This was maintained in the Report No.19 recommendations.

4. From the foregoing it can be seen:

- (i) That despite a recommendation for an increased differential in 1974 the differential had been very substantially cut by 1978.
- (ii) That the differential was then slightly increased, but not by as much as recommended by the Sub-Committee.





(iii) That in 1981 a substantial increase in the differential was recommended by the Sub-Committee, but the recommendation was only partially implemented in 1982.

(iv) That the differential is still less than recommended by the Sub-Committee.

5. During the period from 1975 - 1980 figures supplied by the Lord Chancellor's Department show that there were six refusals to accept High Court Appointment and seven requests to postpone such appointment. During the same period there were forty-one appointments to the High Court Bench. Just under a third must therefore be taken to have been second choices.

These facts have not previously been made known to T.S.R.B. They are significant. It is not known to what extent refusals and requests for postponement were due to an inadequate differential, to the inadequacy of the salary as such apart from the differential, or to other factors, but we have no doubt that the inadequacy of the salary and the differentials, taken together, will have accounted for almost all of them.

These figures reveal a situation which appears to us to indicate that, by reason of the inadequacy of both the salaries and the differentials, the quality of the judiciary and thus the interests of the public have been severely prejudiced. Salaries and differentials should be such as to ensure that, with rare exceptions, the best qualified accept appointment to the High Court Bench when offered. When, over a period of six years, refusals and requests for delays amount to nearly a third of the appointments made in the period, there must surely be a cause for grave concern and a necessity for immediate and vigorous action.

It is true that in the period 1981 to date there has been only one request for postponement and no refusals, but this may well be because in 1982 real progress was made towards bringing salaries up to the required level. This inspired a real (but short-lived) hope that progress would continue. Even, however, if the whole period is taken, to have 14 refusals or postponements in relation to 67 appointments represents a refusal rate of 20%. Not long ago this would have been unthinkable, and it should be made unthinkable again.

We are fully aware that the task of T.S.R.B. has been very difficult, for their recommendations have all too frequently not been implemented; but even if they had been, neither the salaries nor the differentials would have been adequate to achieve the desired result.



We would urge that, whatever the lack of prospect of implementation by the Government, the Sub-Committee should recommend that the differential originally recommended by Lord Beeching's Advisory Group be restored in full and that the T.S.R.B. recommend that the High Court Judge's salary should be not less than the figure of £50,000 recommended by all Heads of Divisions as appropriate in April 1981, updated to take account of inflation since then. Even if the Government do not accept this, the T.S.R.B. and the Sub-Committee will then at least have done their best to secure a top quality judiciary for the future.

6. We are conscious that there may well be pressure from the Circuit Judges to improve their position in relation to the High Court Judges on the ground that they are doing more work previously done only by the High Court Judges. This is quite true, but it is not a ground for reducing the differential. The more that the lighter High Court work is transferred to the Circuit Bench, the greater is the burden on the High Court Judges; for that work, which provided some relief from the burden of the heavier and more difficult cases, is taken from them, and they are left with a wholly unrelieved burden. The transfer is a good ground for increasing the salaries in both appointments. It is not a ground for interfering with the differentials.

7. Apart from the key relationship, we have nothing to say save that (i) we would not favour any differential among the High Court Judges; (ii) the differential between the High Court Judge and the Lord Justice should, we think, be increased, if necessary at the expense of a reduction in the differential between the Lord Justice and the Lord of Appeal. The work of the Court of Appeal is very burdensome, occupying as it does the full working week and the necessity for many reserved judgments to be produced in a short time. The House of Lords, by contrast, work a shorter week and are under much less pressure. Some differential should no doubt be maintained, if only for cosmetic purposes; but if money is short it should be spent on improving the position of the Lord Justices.

In paragraph 6 of our memorandum dated the 17 October 1980 we expressed the view that the total differential between High Court Judges and Lords of Appeal should be divided between Lords Justices and Lords of Appeal in the ratio of 4 : 1. As from 1st January 1984 the salaries in payment will be:

Lord of Appeal	£55,000
Lord Justice	£52,000
High Court Judge	£48,000.



If the above ratio were applied the Lord Justices' salary would be increased to £53,000. We adhere to the view that such an adjustment would more appropriately reflect the differences in work-load, responsibility etc. between the three appointments.

8. We conclude, first, by giving some figures to demonstrate how the position of the Higher judiciary has been allowed to decline, going back, first, no further than 1940. At that time the High Court Judges' salary was £5,000 gross. The equivalent in 1981 would have been £60,450 approx. The salary then in payment was £42,500. If, of course, one goes further back, the difference is even greater. To equal the £5,000 paid in 1914 would have required a salary of £132,850 in 1981. By reason of the increase in taxation much, much more would, of course, have been required to provide the same net equivalent. No one suggests that an attempt should be made fully to restore the position, but such figures should be borne in mind when an outcry is made, as it surely will be, when the salaries necessary to safeguard the future are recommended and put into effect.

9. Finally, we would stress that, having made a start on the road back to a proper salary two years ago, the subsequent treatment has been such as to render the next step in the right direction more difficult.

Two things are now vital. The first is that realistic recommendations are made this year. Now that it is known what is the extent of the refusals it can no longer be said, with regard to recruitment, that the position is "finely balanced" (Report No.16 para. 12) or to submit merely that "there is a risk of a serious problem developing in recruiting Judges of the necessary quality" (Report No.18 para. 69). The problem has already developed.

The second vital matter is that recommendations for 1984 should be in the Government's hands by February. The principle of back-dating increases, in operation until this year, has now been abandoned. It is therefore essential that this report should be in the hands of the Government sufficiently far in advance of 1st April for it to be implemented by that date.