

This opinion.
however, this
apprehension may be
overcome

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This essay will consider whether the retirement age for judges should be increased to 75. With particular emphasis on the current legislative provisions regarding the retirement of judges, this study will consider arguments both for and against updating the current legislation and any issues that may derive from such alterations, including possible alternatives to reformation, before reaching a reasoned conclusion. The current governing legislation on the retirement of judges is the Judicial Pensions and Retirement Act 1993 (JPRA 93). The principle element of JPRA 93 is the restriction of judges to retire on, or before, their 70th birthday. The Act incorporates many elements of the, previously supreme, Judicial Pensions Act 1959 (JPA 59) which similarly required judges to retire on, or before, their 70th birthday in some cases, and on, or before, their 75th birthday in others. However, it issued more extensive guidelines as to when, and how, a judge may continue to perform in their role beyond their 70th birthday. Equally, it provided a uniform retirement age throughout the judiciary. It essentially created far more flexibility, and clarity, towards judicial limitations. An example of such flexibility is that where the Lord Chancellor sees it 'desirable in the public interest' for a judge to continue in their role beyond their 70th birthday, they may be awarded the potential to do so for up to one year, and not beyond the date of their 75th birthday. The JPRA 93 later goes on to reiterate that even where such exceptions are made, no judge can hold office past their 75th birthday. However, judicial retirement is clearly an area of scepticism, with both the Constitution Reform Act 2005 (CRA 05) and Tribunals, Courts and Enforcement Act 2007 (TCEA 07) providing clarity and revision on multiple occasions. It would be argued by many that by

increasing the retirement age of judges to 75, this would increase the certainty that comes with their judgements, and furthermore, certainty within the legal system. An increase in retirement age would see far more judges work later in life, and therefore fewer new appointments appear.

This would create certainty as judges decisions would become far more predictable based on experience. However, such an increase is not without criticisms. To limit the amount of new appointments would equally limit the evolutionary element for which the common law system of England and Wales is renowned for. The predictability of judgements may be seen as a stagnation of decisions which are not reflective of the views of society for which the legal system aims to serve. Rather, by limiting the retirement age to 70, new recruits will enable a fresh view towards the legal system in line with generational changes of opinion. However, this apprehension may be overcome with the initiation of part-time roles and a greater increase in entry level roles. This would enable a stable mixture of well knowledgeable legal minds and modern legal opinions to create continual legal evolution, rather than rapid and unpredictable change. Likewise, the key aim of JPRA 93 was to create consistency within the judiciary, rather than to create a fair retirement age.

It would therefore be unwise to increase the judicial age of retirement without thorough consultation, which has not happened to a necessary extent as of yet. In establishing a fair retirement age, consistency would likely follow in conjunction. Nevertheless, JPRA 93 has certainly provided the consistency it aimed to achieve. Although it enables certain judges to work

until their 75th birthday, this is a rarely achievable goal and, in general, the retirement age for all judges is 70, rather than a complicated mixture of ages as defined in JPA 59. It is important to note, however, that this is an age far different from that of 1995, when JPRA 93 was first enacted. Laws relating to age discrimination in the workplace are far more extensive today than they were two decades ago and any revisions to the judicial retirement age must be viewed in light of this.

Equally, it is problematic to establish at what age all judges are unfit to serve, and who or what may ratify this. The House of Lords recognised this, stating that although finding an overall age to apply to every judge is problematic, these problems do lead to a suggestion that the age of retirement should be increased to 75. Furthermore, the House of Lords went on to consider whether there should be variation between the retirement ages of the judges serving in the appellate and lower level courts. Their perspective being that by returning to a series of retirement ages, as demonstrated in JPA 59, a greater number of new recruits may be assigned to the lower level courts while the higher courts remain for those more experienced judges. This would equally diminish criticisms of the lack of diversity within the judiciary as it would encourage a broader range of applicants to the role of judge, albeit at a lower level, before progression is based on merit rather than predominantly on age. On the other hand, it could be argued that increasing the retirement age to 75 would furthermore reflect a changing social attitude towards age discrimination as it would enable those who have joined a legal career later in life to establish

themselves as a judge, rather than become overshadowed by forced retirement before reaching their potential.

It is inevitable that a late starter would be limited in their role where there are hesitations about the length of their tenure. In addition, providing an easier pathway for those who previously held a profession other than law would expand the criticised diversity of the judiciary as it currently is.

Although, this benefit may equally become a hindrance to the judiciary. By increasing the retirement age to 75, and therefore allowing individuals to become judges later in life, this may strengthen the views that the judiciary is growing further out of touch, rather than diversifying. A key criticism of the diversity of the judiciary is age related, mainly that the majority of judges are senior, white and male. If disproportion continues to grow within the judiciary due to the increase in retirement age, then the opposite effect would be achieved and this would furthermore hinder the overall view of the legal system. In conclusion, the retirement age for judges should generally remain at 70, however, the exceptions expressed within JPRA 93 should be comprehensively expanded. In doing so, any revisions to the Act should allow for more judges acting in the appellate and higher courts to remain there until their 75th birthday where they have shown considerable merit, which cannot be replicated by a newer recruit.

This would allow for a greater level of diversity in the lower courts at the initial time of implementation, which would then organically improve over time. Likewise, it would enable current judges to be assessed on merit rather than the unfair test of age at present. There are, of course, potential issues

with the implementation of this such as a lengthened stagnation of disproportionate representation at the higher levels of the judiciary.

However, this is an issue of which it is impossible to resolve in a single day, or a single statute, and disproportionate representation would reduce organically as the new entrants at the lower levels move up the court system based on achievement. Most importantly, steady change within the judiciary would decrease the likelihood of unpredictability within legal judgements and case law while abiding by modern discrimination laws.