



Ministry of
JUSTICE

RECORDERS

**Policy, Procedure & Terms and
Conditions of Service**

RECORDER TERMS AND CONDITIONS

Introduction

1. Section 21 of the Courts Act 1971¹ provides for the appointment of Recorders by the Crown on the recommendation of the Lord Chancellor to act as part-time judges of the Crown Court and to carry out such other judicial functions as may be conferred on them.
2. This memorandum contains information about the terms and conditions of appointment, which should be understood and agreed by all those accepting appointment. These terms and conditions are correct as at the date given at the end of this memorandum, but may in some circumstances be subject to change.

Nature of the post

3. Recorders sit in both the Crown Court and county courts. Their jurisdiction is broadly similar to that of a Circuit Judge, but they will generally handle the less complex or serious matters coming before the court. A Recorder is required to sit judicially for at least 15 days a year (and not normally for more than 30), of which at least 10 days should if possible be in one continuous period. Some Recorders may be authorised under s.9(1) of the Supreme Court Act 1981 to sit in the High Court to meet a specific business need.

Freemasonry

4. Following the Government's response to the Report of the House of Commons Select Committee on Freemasonry in the Police and the Judiciary, anyone being appointed for the first time to a judicial office is asked as a condition of appointment whether they belong to the Freemasons and, if not, that they notify the Lord Chancellor in the event that they subsequently join them. Judicial post holders must expect that this information may be included in a public register.

Oaths

5. New Recorders will be required to take the Oath of Allegiance and the Judicial Oath before being permitted to sit. These oaths must be taken before a judge of the Court of Appeal or of the High Court, or a Circuit Judge². This will be arranged after appointment by agreement between the Recorder and the Regional Director's Office once the Royal Warrant has been issued.

Duration of Appointment

6. An appointment as a Recorder is for a (renewable) period of five years.

Renewal of Appointment

7. Recorder appointments will be automatically extended by the Lord Chancellor under s.21(4) of the Courts Act 1971 for further successive terms of five years, subject to the individual's agreement and the upper age limit, *unless* a question of cause for non-renewal is raised or the individual no longer satisfies the conditions or qualifications for appointment.
8. There are seven grounds for non-renewal:
 1. incapacity;
 2. misbehaviour; including
 - persistent failure to comply with sitting requirements (without good reason);
 - failure to comply with training requirements;

¹ As amended by Schedule 10 to the Courts & Legal Services Act 1990.

² Section 22(2) of the Courts Act 1971.

- sustained failure to observe the standards reasonably expected from a holder of such office;
- 3. part of a reduction in numbers because of changes in operational requirements;
- 4. part of a structural change to enable recruitment of new Recorders.

All decisions not to renew on grounds 1-5 are taken by the Lord Chancellor with the concurrence of the Lord Chief Justice. Such decisions are taken following an investigation conducted by a judge, who will report to the Lord Chancellor and the Lord Chief Justice.

9. All decisions not to renew on grounds 6 or 7 will be on a “first in, first out” principle, and the decision to use such grounds and the extent to which they will be used will be taken by the Lord Chancellor with the concurrence of the Lord Chief Justice.
10. Recorders may choose to end their appointment by resignation or by declining to accept renewal on completion of a term.

Upper Age Limit

11. The Lord Chancellor will not normally extend a Recordership beyond the end of the financial year in which the Recorder reaches the age of 65.

Training

Crown Court Induction

12. Recorders are authorised for training in the first instance and may only be authorised to sit following satisfactory completion of an induction programme, comprising:
 - attendance at a residential induction course organised by the Judicial Studies Board
 - visits to at least two penal establishments including a prison and a young offender institution
 - a meeting with representatives of the probation service
 - sitting in with a circuit judge (tutor/pupil master judge) in the Crown Court for a minimum period of 5 days for those with current experience of criminal work and a minimum of 10 days for those without such experience, at least one week of which will be arranged before attendance at the residential induction course
 - a period of supervised sitting
13. The visits to penal establishments and meeting with representatives of the Probation Service are designed to relate to the exercise of judicial functions and normal contact in day-to-day practice does not meet this need.
14. The JSB will contact Recorders about the induction course. There is pre-course work to be completed, details of which will be given by the JSB. The Recorder will be contacted by the Regional Director on the Region to which he or she has been assigned about arrangements for the other elements of the training. It may be some months before this happens and Recorders should not be concerned by the delay.
15. Recorders who have had little or no recent criminal experience are required to do 10 days sitting with a Circuit Judge in the Crown Court, one week of which will be arranged prior to the JSB course and the second week after the course. Those with recent criminal experience will be required to sit in for one week after the JSB induction course. The Regional Director’s Office or Area Director’s Office will make arrangements for all periods of sitting-in.
16. Once a Recorder has accepted an invitation for a particular course, he or she should not withdraw from that course other than in the event of unexpected or pressing necessity. If he or she does so, he or she may not be offered a place on a future JSB course. The Lord Chancellor considers it important that the sitting-in with a Circuit Judge, prison visits and the meeting with representatives of the Probation Service should take place **within three months** of the induction course. The supervised

sitting period must follow as soon as possible after all the other elements of the induction programme (as described in paragraph 14 above) have been satisfactorily completed and the Recorder has been 'sworn-in' following the issue of his or her Royal Warrant. If the sitting-in, meeting, visits and supervised sittings elements of the programme are not completed within 6 months of the course, the Recorder may be required to attend a second course. **The training and sitting commitment undertaken by prospective or serving Recorders is a personal one and the Lord Chancellor and the Lord Chief Justice regard it as a Recorder's personal responsibility (and not that of his/her clerk/secretary) to ensure that they meet their obligations. If a Recorder instructs another person to make arrangements on his or her behalf, they must make clear to them the priority which must be given to these training and sitting commitments.**

17. As part of the induction training the tutor/pupil master judge with whom the Recorder sits-in is required to provide a brief report on the sitting-in, indicating whether or not, in his or her view, the Recorder is ready to sit alone. This report is given before the period of supervised sitting, as a Recorder must not sit until the Lord Chancellor's authorisation has been given and the Recorder has been 'sworn-in' following the issue of his or her Royal Warrant.
18. Subsequently during the period of supervised sitting a Recorder will be observed for a short period by a Circuit Judge.

County Court Induction

19. After a period, normally of 18 – 24 months, sitting as Recorder in the Crown Court, office holders may be invited by the Regional Director to sit in the county courts. Before being authorised a civil induction programme (similar to the criminal induction programme outlined above) must be undertaken. This includes attendance at a residential civil induction course at the JSB, sitting in for five days with a District Judge before the seminars and a period of at least five days supervised sitting week in a county court under the guidance of a tutor/pupil master judge after the seminar. The tutor/pupil master judge with whom the Recorder sits-in is required to provide a report on the sitting-in week following which, if the report is satisfactory, the Recorder will be authorised to sit in county courts, initially to undertake the supervised sittings week. As with the training for the Crown Court, there will be a short period of observation during the supervised week.

Civil only Recorder appointments

20. Some Recorders are authorised by the Lord Chancellor to sit in county courts only. Before being authorised to sit in the county courts, they are required to complete a civil induction programme. The supervised sitting period must follow as soon as possible after all the other elements of the civil induction programme have been satisfactorily completed and the Recorder has been 'sworn-in' following the issue of his or her Royal Warrant.

Attendance at Judicial Seminars

21. The Lord Chancellor and the Lord Chief Justice expect Recorders, when invited, to attend one day or residential continuation training arranged by the Judicial Studies Board, as well as one-day circuit sentencing conferences arranged by the Presiding Judges. Time spent at these events may count towards the annual sitting commitment.

Arrangements for Sittings

22. The Courts Act 1971 imposes no limit on the territorial jurisdiction of Recorders; they may, therefore, sit anywhere in England and Wales, although for administrative reasons they will be assigned to a Region. The centres at which Recorders will be expected to sit will be fixed by agreement with the relevant Regional Director's Office. The appointment carries an obligation to sit at any court centre in the country in the exercise of the relevant jurisdiction. It should not be seen as conferring an

expectation to any given level of future sittings, nor of any level of future sittings at a particular location.

23. Section 21(3) of the Courts Act 1971 requires the appointments of Recorders to specify the term for which they are appointed and the frequency and duration of the occasions during that term of appointment for which they will be required to be available to undertake their judicial duties, unless officially notified to the contrary.

Sitting Days

24. Recorders will be entitled to the offer of a minimum of 15 sitting days each financial year. A Recorder is required to sit judicially for at least 15 days a year and not normally for more than 30 days. The Lord Chancellor expects Recorders to achieve the minimum sitting days requirement unless, in exceptional circumstances, it is rendered impossible by the performance of other public duties. HM Court Service staff will be expected to take into account the circumstances and commitments of Recorders when drawing on their services. **It is a Recorder's personal responsibility (and not that of his/her clerk/secretary) to ensure that they meet their minimum sitting obligation.** These figures may be subject to general adjustment from time to time, in the light of operational circumstances: any changes will be announced. At least 10 days should if possible be in one continuous period. The remainder must normally be in continuous periods of at least 5 days.
25. Once authorised to sit, Recorders are expected to sit at one or more court centres and to book their sittings in advance in accordance with the procedure laid down on the Region to which they are assigned. Subject to the needs of the courts, Recorders may be invited to sit for more than the minimum number of days required, but will not normally sit for more than 30 days in any one year. Time spent sitting as a deputy High Court judge, judge of the Court of Appeal of Jersey or Guernsey or of the Court of Appeal of the Isle of Man or as a member of the Parole Board or Restricted of the Patient Panel of the Mental Health Review Tribunal may be counted towards annual sitting days. Time spent at training events or sitting in also counts towards the annual sitting commitment.
26. The dates when Recorders will be required to sit will be fixed by agreement between them and the Court Group concerned.

Honorary Recorderships

27. Section 54 of the Courts Act 1971 empowers the council of a district which has been granted the status of a borough to appoint a person (who must normally be a Circuit Judge or Recorder) to be an Honorary Recorder of the Borough. These appointments are solely within the discretion of the councils concerned and are not a matter for the Lord Chancellor. Should Recorders accept such appointments it may not be possible for the Lord Chief Justice to agree in every case that they should have the right to spend all, or even part, of their time sitting in that borough. Such appointments will, however, be taken into account as a relevant factor when sittings are agreed between the Recorder and the Regional Director and Court Area Director.

Clash of Commitments

28. Once a Recorder has agreed his or her sitting dates with the Regional Office, it should be exceptional for them to withdraw from their engagement and they will be expected to keep these dates free of other commitments. If there should be any unexpected clash between planned judicial sittings and a professional engagement, a Recorder should refuse the latter provided that they can do so without prejudicing the interests of their lay clients. If this is impossible, the professional commitment will have to take priority, but as much notice as possible should be given to HM Court Service to improve the chances of a replacement being found.

Conflict of Interest

29. The governing principle is that no person should sit in a judicial capacity in any circumstances, which would lead an objective onlooker with knowledge of all the

material facts reasonably to suspect that the person might be biased. As a general principle therefore, a barrister or solicitor advocate ought not to sit as a Recorder, or to appear, at a county court or elsewhere if he or she is liable to be embarrassed in either capacity by doing so. In particular they should not in any circumstances appear in any court before a jury which includes members of a jury panel serving at that court when they sat there as a Recorder, or vice versa.

30. As a general rule, it is undesirable for fee-paid judicial office holders who are solicitors to sit at a court where he or she or any partner or employee of theirs regularly practises. This is to help avoid them being assigned to adjudicate in a case (or several cases) from which they would have to stand down. If a fee-paid judicial office holder who is a solicitor does sit at such a court then the Lord Chancellor and the Lord Chief Justice regard it as the personal responsibility of the judicial office holder (and not that of the court staff) to ensure, as far as possible, that he or she avoids any potential conflict of interest which might require him or her to stand down from a particular case.
31. Fee-paid judicial office holders:-
- (i) should not sit in cases involving their own firms or clients or otherwise where to do so could give rise to the perception of prejudice in the administration of justice;
 - (ii) should comply with the existing case law governing pecuniary or other interests in deciding whether to declare an interest in, or to stand down from, a particular case e.g. "*Locabail (UK) Ltd v Bayfield Properties Ltd and Another* [2000] Q.B. 451; *In re Medicaments and Related Classes of Goods (No 2)* [2001] 1 W.L.R. 700; and *Lawal v Northern Spirit Limited* [2003] UKHL 35."
 - (iii) should not sit on a case if they have a personal, professional or pecuniary interest in that case; or if any businesses or practices of which they are members in any capacity have such an interest.
32. Fee-paid judicial office holders are expected to refrain from any activity, political or otherwise, which would conflict with their judicial office or be seen to compromise their impartiality, having regard for example to the comments of the Court of Appeal in the case of *Locabail*. A Recorder who is an MP, Parliamentary candidate or local Councillor should not sit as a Recorder within their own constituency or the area covered by the Council. They should also be aware of the risk of a perceived lack of impartiality arising from published articles or public pronouncements, etc. (*Timmins v Gormley* [(2000) 2 WLR 870]). Fee-paid judicial office holders should exercise caution in any reference to their appointment on, for example, letterheads or in chambers advertising literature. Fee-paid holders hold office only when they are serving judicially and should not use their appointment as a means of pursuing personal, professional or commercial advantage.

Dress

33. Recorders will be expected to wear their normal professional robes when sitting. Solicitors sitting as Recorders should wear, in addition, a junior barrister's wig.

Judicial Conduct

34. The Lord Chancellor and the Lord Chief Justice believe that the public both deserves and expects the highest standards of conduct from those who hold judicial office. Without prejudice to the paragraphs below, a Recorder should notify the Lord Chief Justice at the earliest opportunity if they are aware of any matters relating to conduct which may affect their position or may reflect on the standing and reputation of the judiciary at large.
35. A Recorder should also notify the Lord Chief Justice if they get into serious financial difficulties, particularly if legal proceedings appear to be likely to be, or have actually been, initiated. They should also inform the Lord Chief Justice of any complaint made against them by their professional body, whether it relates to their professional or

judicial capacity. Office holders must notify the Lord Chief Justice if they are involved, or likely to get involved in any court proceedings.

36. If a Recorder is charged with, or cautioned for any criminal offence, other than a parking or speeding offence without aggravating circumstances, whether before or after they have been authorised to sit as a Recorder, they should report the matter at once to the Lord Chief Justice and should keep him informed of the progress and outcome of the case. Failure to do so could itself in some cases amount prima facie to misbehaviour. Convictions for some offences, including some motoring matters, need not necessarily be regarded as being incompatible with continuing to hold judicial office. However, if a judicial office holder were convicted of a grave offence, for instance one involving violence to persons, dishonesty or moral turpitude, the Lord Chancellor and the Lord Chief Justice would regard themselves as having cause to consider the exercise of their powers to remove the individual from office on the grounds of misbehaviour; and the Lord Chancellor and the Lord Chief Justice regard a conviction for an offence of driving while under the influence of alcohol or drugs as so grave as to amount to prima facie to misbehaviour.
37. The Lord Chancellor and the Lord Chief Justice believe that the public must be entitled to expect all judicial office holders to maintain at all times proper standards of courtesy and consideration. They do not regard behaviour which could cause offence, particularly on racial or religious grounds, or amounting to sexual harassment, as consistent with the standards expected of those who hold judicial office. A substantiated complaint of conduct of this kind, whether or not previous complaints have also been made, is in their view capable of being regarded as misbehaviour.
38. The exercise of the Lord Chancellor's and the Lord Chief Justice's disciplinary powers are governed by regulations made by the Lord Chief Justice under sections 115 and 117 of the Constitutional Reform Act 2005. They enable any observations which the office holder may wish to make on the matter to be taken fully into account. The Lord Chancellor and the Lord Chief Justice will not consider the exercise of the powers vested in them in respect of judicial conduct without serious cause and the most careful deliberation.
- Removal from office**
39. Section 21(6) of the Courts Act 1971 provides that the Lord Chancellor may if he thinks fit terminate the appointment of a Recorder on specified grounds. There are five grounds for removal from appointment:
1. incapacity;
 2. misbehaviour; including
 3. failure to comply with training requirements;
 4. persistent failure to comply with sitting requirements (without good reason);
 5. sustained failure to observe the standards reasonably expected from a holder of such office.

<p>All decisions to remove are taken by the Lord Chancellor with the concurrence of the Lord Chief Justice. Such decisions are taken in accordance with the procedures contained in the Regulations referred to at paragraph 38 above.</p>

Fees

40. The appointment is non-salaried and non-pensionable. Recorders will receive a fee for each day sat. The current fee is £560 per day. These fees are revised from time to time. In accordance with the recommendation of the Senior Salaries Review Body (SSRB) fees are calculated by dividing the salary for the equivalent full-time office by 220. The effect of this divisor is that a pro rata allowance for annual leave and public and privilege holidays is built into the daily fee. There is also a daily fee of half the daily rate for sitting in with a Circuit Judge and attendance at the Judicial Studies Board residential courses, although no fee is payable for visits to penal

establishments and meeting with representatives of the Probation Service. No annual retainer will be payable, but provided that Recorders make themselves available to sit for the minimum number of days to be offered to them under this appointment then they will be entitled to be paid accordingly whether or not they are in fact called upon to sit. Subject to that, payment for cancelled sittings will, however, only be allowed in special circumstances, for example, where the Recorder has already travelled to the place where they were due to sit before being notified of the cancellation. Recorders authorised to sit in the High Court are paid the daily fee appropriate to a Deputy High Court Judge.

41. It is a general principle that Crown servants in receipt of a salary do not normally receive additional remuneration for public offices held, or work undertaken, concurrently on a fee-paid basis. While there may be circumstances (e.g. where it can be demonstrated that the judicial sittings are undertaken during a period of unpaid leave from the primary office or employment) where daily sitting fees may be payable, in general full time public office holders and public servants paid by Central Government will receive no remuneration for any fee-paid judicial offices held concurrently.
42. Fee paid judicial office-holders who are practitioners or private sector employees are expected to be open and transparent with their firm, chambers or primary employer in terms of the arrangements, including financial arrangements, relating to their judicial appointment. It is essential that remuneration arrangements, and any uncertainties surrounding particular individual circumstances, should be resolved at the time of appointment or at the earliest opportunity following a material change of circumstances during a period of service. The same expectations apply to those fee-paid judicial office-holders who are employed by, or are officers of, local government.

Income Tax and National Insurance contributions

43. Recorders are regarded as holders of an office for tax and National Insurance purposes. Fees payable will, as a result, be chargeable to tax under Schedule E of the Taxes Act and subject to Class 1 National Insurance contributions. These liabilities will be deducted via the Ministry of Justices' payroll system and the net fee paid to the office-holder. Fees are not subject to VAT.
44. Office-holders may wish to be aware that in certain circumstances, HM Revenue & Customs is prepared, by administrative practice, to treat the emoluments of an office held by someone who is also a professional in private practice as ordinary professional receipts within Case II of Schedule D. Office holders who want further details on this practice should contact their HM Revenue & Customs Office or see the website at www.hmrc.gov.uk. The Ministry of Justice has, however, been advised by HM Revenue & Customs that it is unlikely that fee-paid appointments to Recorder will qualify for this administrative practice as the condition that "there would be practical difficulties if Schedule E were to be applied to the fees received" will not be met, since the Ministry of Justice is able to process the payments through its payroll system.
45. In the event that the practice is nevertheless adopted, in exceptional cases, the Inspector will issue a 'No Tax' code to the Ministry of Justice and no Schedule E tax will be deducted from the fee. The fees should then be included in the office holder's Self-Assessment return alongside other Schedule D fees received. Class 1 National Insurance contributions will, however, continue to be deducted from the fee subject to paragraph 46 below since the adoption of this practice does not affect the liability to pay the contributions.
46. Although it is the responsibility of a fee-paid office holder to arrange matters with HM Revenue & Customs National Insurance Contributions Office, the Ministry of Justice understands that it is open to them to apply to defer payment of contributions before the beginning of a new tax year or during a current tax year or to apply for refund of excess contributions made in a previous year. Further details may be obtained by contacting the Deferment Group at HM Revenue & Customs National Insurance Contributions Office, Longbenton.

47. It would be helpful, and avoid confusion, if in any correspondence with HM Revenue & Customs regarding fees and allowances attributable to any fee-paid office, and with HM Revenue & Customs National Insurance Contributions Office regarding deferment of payment or refund of National Insurance contributions, office holders would give as the address for the fee paying authority the appropriate Tribunal or Regional Office for Court based judiciary, and mention the fact that they are office holders, and not employees of the Ministry of Justice.

Travelling and Night Subsistence Allowances

48. Travelling expenses and in certain circumstances night subsistence allowances may be payable in connection with sittings, attendance at training courses etc. Details of the rules governing the payment of these allowances will be supplied by the Regional Director or Area Director. The rules governing and rates of these allowances may change from time to time, and any such changes will be notified. HM Revenue & Customs tax rules governing the tax treatment, and rates, of these allowances may also change and any such changes will be notified to office holders.

Residence

49. However, an offer of appointment after 1 January 2008 is conditional on the Lord Chancellor being satisfied that a person will reside, when he/she has taken up his/her appointment, in a place which is usually reasonably convenient of daily access to the courts at which he/she will normally sit.

Transfers

50. Where a person has been appointed to the office of Recorder after 1 January 2008, no request for a transfer to another circuit will normally be entertained until the Recorder has served 5 years on the circuits to which he/she was appointed.

Maternity, Paternity and Adoption Leave and Statutory Sick Pay

51. Fee paid judicial office holders are entitled to maternity, paternity and adoption leave and Statutory Sick Pay. Details of the operation of these entitlements will be provided to office holders as appropriate.

Media Guidance

52. Guidance on relations with the media will be provided by the Judicial Communications Office (JCO). The JCO provides communications support to judicial office holders in England & Wales (including salaried and fee-paid judges, tribunal members and magistrates). This includes advice on media issues such as mis-reporting and requests for interviews, as well as an external judicial website, an intranet and a newsletter for the judiciary. The JCO is based in the Royal Courts of Justice, is accountable to the Lord Chief Justice and is independent of any Government press office. The JCO's media team is available on 020 7073 4852, fax 020 7947 6544 or e-mail press.enquiries@judiciary.gsi.gov.uk. The out of hours pager number is 07659 550652.

Advice

53. Judicial office holders are welcome to consult the Ministry of Justice or the Judicial Office for England and Wales (as appropriate) on any matters relating to judicial appointments. Judicial training enquiries should be directed to the Judicial Studies Board on 020 7217 4762 and media enquiries to the Lord Chief Justice's Judicial Communications Office on 020 7947 6438.

Ministry of Justice
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