

DEPUTY DISTRICT JUDGE (MAGISTRATES' COURTS): 2008

TERMS & CONDITIONS OF APPOINTMENT

INTRODUCTION

1. Section 24 of the Courts Act 2003 provides for the appointment of Deputy District Judge (Magistrates' Courts) by the Lord Chancellor.
2. This memorandum contains information about the terms and conditions of appointment, which should be understood and agreed by all those accepting an appointment. The 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.

FREEMASONRY

3. 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 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.

TRAINING

4. Before sitting alone, all newly-appointed deputies must complete a period of sitting-in with an experienced District Judge (Magistrates' Courts) for a minimum of 5 days and are expected to attend a residential induction course arranged by the Judicial Studies Board. They are also required to visit one of Her Majesty's prisons and the Probation Service. Deputies are required to attend post-appointment training courses organised by the Judicial Studies Board. Failure to attend such courses might result in a Deputy being removed from office.
5. The Judicial Studies Board will notify the deputies of the next Induction Course and make arrangements for their attendance on it.

APPRAISAL & MENTORING

6. The Senior District Judge (Chief Magistrates) will contact the newly appointed deputies with regard to the Appraisal and Mentoring Scheme.

RESIDENCE

7. An offer of appointment is conditional of the Lord Chancellor's being satisfied that a Deputy District Judge (Magistrates' Court) will reside, when he/she has taken up his/her appointment, in a place which is within a reasonable distance of his/her base court or courts. No application for a transfer may normally be entertained until the judge has served 5 years in the location to which he/she was appointed.

DURATION OF APPOINTMENT

8. An appointment as a Deputy District Judge (Magistrates' Courts) is for a (renewable) period of five years, subject to the upper age limit.

RENEWAL OF APPOINTMENT

9. At the end of the initial five year appointment, renewal for further successive periods of five years is automatic subject to the individual's agreement and the upper age limit unless a question for non-renewal is raised, or the individual no longer satisfies the conditions or qualifications for appointment.
10. There are seven grounds for non-renewal:
 - a. incapacity;
 - b. misbehaviour; including
 - c. persistent failure to comply with sitting requirements (without good reason);
 - d. failure to comply with training requirements;
 - e. sustained failure to observe the standards reasonably expected from a holder of such office;
 - f. part of a reduction in numbers because of changes in operational requirements; and
 - g. part of a structural change to enable recruitment of new Deputy District Judge (Magistrates' Courts).
11. All decisions not to renew on grounds (a) - (e) 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.
12. All decisions not to renew on grounds (f) or (g) 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.
13. Deputy District Judge (Magistrates' Courts) may choose to end their appointment by resignation or by declining to accept renewal on completion of a term.

UPPER AGE LIMIT

14. The Lord Chancellor will not normally extend the appointment of a Deputy District Judge (Magistrates' Courts) beyond the age of 70.

SITTINGS

15. This 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 any expectation of any given level of future sittings, nor of any level of future sittings at a particular location.
16. The Lord Chancellor, in consultation with the Lord Chief Justice, has decided that all fee-paid office holders in this jurisdiction should be offered and required to sit a minimum of 15 days a year. A Deputy District Judge (Magistrates' Courts) may be expected to sit for more than the minimum subject to the availability of work and individual circumstances. A Deputy District Judge (Magistrates' Courts) may sit up to a maximum of 50 days a year. These figures may be subject to general adjustment from time to time, in the light of operational circumstances: any changes will be announced. The Lord Chancellor and the Lord Chief Justice regard it as the personal responsibility of Deputy District Judge (Magistrates' Courts) to ensure that they meet their sitting obligations unless, in exceptional circumstances, it is rendered impossible by the performance of other public duties.
17. A Deputy District Judge (Magistrates' Courts) should plan to make him or herself available for judicial business between the hours of 9.30 a.m. and 4.30 p.m. However, practice can vary and Deputy District Judge (Magistrates' Courts) should observe the requirements of the courts.

OTHER JUDICIAL WORK

18. There is no objection in principle to an individual holding more than one judicial appointment.
19. The holder of salaried judicial office may, subject to suitability, also sit as a fee-paid Deputy District Judge (Magistrates' Courts) and will be required to give the minimum 15 days. However, the Lord Chancellor and Lord Chief Justice expect holders of salaried judicial office to give priority to the duties of that office and arrangements for other sittings as a Deputy District Judge (Magistrates' Courts) are subject to agreement between the office-holder, the Magistrates' Court and Her Majesty's Court Service.

CONFLICTS OF INTEREST

20. 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 Deputy District Judge (Magistrates' Courts), or to appear, at a Magistrates' Court or Crown Court or elsewhere if he or she is liable to be embarrassed in either capacity by doing so.
21. 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 cases from which they would have to stand down. If a 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 (and not that of the court staff) to avoid, as far as possible, any potential conflict of interest which might require him or her to stand down from a particular case.
22. Fee-paid judicial office holders:
 - a. should not sit in a case involving their own firm or client, or otherwise where to do so could give rise to the perception of prejudice in the administration of justice.
 - b. 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.
 - c. should not sit on a case if they have a personal, professional or pecuniary interest in that case, or if any business or practice of which they are members in any capacity has such an interest.
23. 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*. 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 W.L.R. 870). Fee-paid judicial office holders should exercise caution in any reference to their appointment on, for example, letterheads or in chambers' advertising literature. They hold office only when exercising the functions of the office and should not use their office as a means of pursuing personal, professional or commercial advantage.

JUDICIAL CONDUCT

24. The public both deserves and expects the highest standards of conduct from those who hold judicial office. Without prejudice to the paragraphs below, an office holder 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.

25. An office holder 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.
26. Where, either before or after he/she has commenced service, an office holder is cautioned for, or charged with, any criminal offence, other than a parking or speeding offence without aggravating circumstances, i.e. an offence for which a period of disqualification, or at least 6 penalty points, are imposed, or which results in a total of more than 6 currently accumulated penalty points, he/she 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 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 serve. 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 prima facie to misbehaviour.
27. The public must be entitled to expect all judicial office holders to maintain at all times proper standards of courtesy and consideration. The Lord Chancellor and the Lord Chief Justice 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.
28. 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.

RENEWAL FROM OFFICE

29. The Lord Chancellor may if he thinks fit terminate the appointment of a fee-paid member on specified grounds. There are five grounds for removal from appointment:
 - a. incapacity;
 - b. misbehaviour; including
 - c. failure to comply with training requirements;
 - d. persistent failure to comply with sitting requirements (without good reason); and
 - e. sustained failure to observe the standards reasonably expected from a holder of such office.
30. 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 28 above.

FEES

31. The appointment is non-salaried and non-pensionable. A Deputy District Judge (Magistrates' Courts) will receive a fee for each day sat. The current fee is £450 per day. The fees are revised from time to time. Half this amount is payable during sitting-in training and induction training. 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.
32. 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 public office holders and public servants paid by Central Government will receive no remuneration for any fee-paid judicial offices held concurrently.
33. 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

34. Deputy District Judge (Magistrates Courts) 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.
35. 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 11 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 Deputy District Judge (Magistrates' Courts) 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.
36. 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 37 below since the adoption of this practice does not affect the liability to pay the contributions.
37. Although it is the responsibility of a fee-paid office holder to arrange matters with HM Revenue & Customs National 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 a 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.

38. It would be helpful, and to 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 refund or National Insurance contributions, office holders would give as the address for the fee paying authority the appropriate Area Director's Office and mention the fact that they are office holders, and not employees of the Ministry of Justice.

TRAVELLING AND NIGHT SUBSISTENCE ALLOWANCES

39. Travelling expenses and in certain circumstances night subsistence allowances may be payable in connection with sittings, attendance at training courses etc. A Deputy District Judge (Magistrates' Courts) travelling by rail to a centre where they have been asked to sit will be entitled to first class rail fare and the cost of taxis where necessary at each end. If they use their own car, they will be entitled to a mileage allowance at rates fixed from time to time by the Department. For every night on which it is necessary for a Deputy District Judge (Magistrates' Courts) to stay away from home, he or she will be entitled to a night subsistence allowance. Details of the current rates of mileage and night subsistence allowances and the rules which apply, will be notified to the Deputy District Judge (Magistrates' Courts) by the staff of Her Majesty's Court Service. 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.

MATERNITY, PATERNITY AND ADOPTION LEAVE AND STATUTORY SICK PAY

40. 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

41. 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

42. 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. Enquiries relating to the operation of the Courts should be directed to the Chief Magistrates' Office.