

FEE-PAID EMPLOYMENT JUDGE

TERMS AND CONDITIONS OF SERVICE AND TERMS OF APPOINTMENT

INTRODUCTION

1. Employment Judges are appointed by the Lord Chancellor under Regulation 8(3) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004. By virtue of Regulation 8(4), Employment Judges hold and vacate office in accordance with their terms or appointment.
2. The following is a summary of the basic terms and conditions of service. The terms and conditions are correct as at the date given at the end of this document, but may in some circumstances be subject to change.

LOCATIONS

3. Employment Judges sit throughout England & Wales, currently in 12 regional offices, 9 ancillary offices and 12 or more hearing centres. Employment Judges will be assigned by the President to sit in a particular Region although they may be required, from time to time, to sit elsewhere according to the needs of the Tribunals.

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 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.

DURATION OF APPOINTMENT

5. An appointment as a fee-paid Employment Judge is for a (renewable) period of five years, subject to the upper age limit.

RENEWAL OF APPOINTMENT

6. 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 of cause for non-renewal is raised, or the individual no longer satisfies the conditions or qualifications for appointment.

There are seven grounds for non-renewal:

- (a) inability;
- (b) misbehaviour; including
- (c) 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;

(g) part of a structural change to enable recruitment of new fee-paid Employment Judges.

7. 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.
8. All decisions not to renew on grounds (f) or (g) will be on a “first in, first out” principle. The decision to use such grounds and the extent to which they will be used will be taken by the Lord Chancellor after consultation with the President of the Employment Tribunals and with the concurrence of the Lord Chief Justice.
9. Fee-paid Employment Judges may choose to end their appointment by resignation or by declining to accept renewal on completion of a term.

UPPER AGE LIMIT

10. The appointment of a fee-paid Employment Judge will not normally be extended beyond the age of 70.

TRAINING

11. Newly appointed fee-paid Employment Judges are not eligible to sit until they have attended and satisfactorily completed the initial induction course. An integral part of the course is a requirement to attend two observation days before induction training and two after. The President will write to the office holder providing further details. During the course of their appointment, office holders are required to undertake such training as may be arranged and required by the President in accordance with the criteria set out by him to include a satisfactory record of sittings and performance.

ARRANGEMENTS FOR SITTINGS

12. A fee-paid Employment Judge is called upon to sit and to undertake other prescribed duties as the need arises. The frequency of sittings etc. depends upon the workload of the Tribunal and on the commitments of the office holder. An office holder's workload is arranged, in consultation with him as appropriate, by the President, or by the Regional Employment Judge in the light of directions and instructions given by the President, as the case may be. Fee-paid Employment Judges will be entitled to the offer of a minimum of 30 days' sittings annually. The workload of the Tribunal is such that fee-paid Employment Judges are required to sit for a minimum of 30 days per calendar year. Failure to meet sitting requirements without good reason is grounds for non-renewal or removal from the office of fee-paid Employment Judge.

CONFLICTS OF INTEREST

13. 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 judicial office holder, or to appear before a tribunal, at a particular hearing if he or she is liable to be embarrassed in either capacity by doing so.

14. Fee-paid judicial office holders must not become involved in the preparation or representation of cases in the whole of the region to which they have been assigned to sit. The Lord Chancellor and the Lord Chief Justice regard it as the judicial office holder's personal responsibility (and not that of the staff of the tribunal or the hearing centre) to avoid, as far as possible, any potential conflict of interest which might require him or her to stand down from a particular case.
15. Fee-paid judicial office holders:
 - (a) 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;
 - (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 (No2)* {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 businesses or practices of which they are members in any capacity has such an interest.
16. 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

17. The public both deserves and expects the highest standards of conduct from those who hold judicial office. An office holder should not in any capacity engage in any activity which might undermine, or be reasonably thought to undermine, his or her judicial independence or impartiality. An office holder should notify the President 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.
18. A fee-paid Employment Judge should also notify the Senior President 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 Senior President of any complaint made against them by their professional body, whether it relates to their professional or judicial capacity. Office holders must notify the President if they are involved, or likely to get involved in any court proceedings.
19. If an office holder is charged with, or cautioned for any criminal offence, other than a parking or speeding offence without aggravating circumstances, whether before or after he or she has been authorised to sit as a fee-paid office holder, they should report the matter at once to the President 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 on prima facie to misbehaviour.

20. 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 grounds of race, religion or belief or sexual orientation 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 as being regarded as misbehaviour.
21. 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

22. 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. inability;
 - b. misbehaviour; including
 - c. failure to comply with training requirements;
 - d. failure to comply with sitting requirements (without good reason); and
 - e. failure to observe the standards reasonably expected from a holder of such office
23. 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 21 above.

DISQUALIFICATION

24. Fee-paid Employment Judges are precluded by statute from serving concurrently as Members of Parliament, etc. A fee-paid member is expected to submit his or her resignation to the Lord Chancellor in the event of nomination or adoption as a prospective candidate for election to Parliament, to the Scottish Parliament, to the Welsh Assembly, to the Northern Ireland assembly or the European Parliament. The Lord Chancellor should be consulted if doubts arise about any particular circumstances.

FEES INCOME TAX AND NATIONAL INSURANCE

25. The post is non-salaried and non-pensionable. A judicial office holder will receive a fee for each day sat. Fee and salary levels for the Employment Tribunals are currently being considered by the Senior Salaries Review Body, but the daily fee for this post is likely to be not less than £443 per day.
26. 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.
27. 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.
28. Fee-paid members 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 Justice's payroll system and the net fee paid to the office holder. Fees are not subject to VAT.

TRAVELLING EXPENSES, ETC.

29. Travelling expenses and in certain circumstances night subsistence allowances may be payable in connection with sittings, attendance at training courses, etc. Details of the current mileage and night subsistence rates will be supplied by the staff of the Tribunal. 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

30. 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.