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Information Pack:

00394: Fee Paid Deputy Chairman of the Copyright Tribunal (2008)

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INTRODUCTION

The Judicial Appointments Commission (JAC) is now inviting applications for the post of Fee Paid Deputy Chairman of the Copyright Tribunal. The closing date for applications is **20 November 2008**. Hearings usually take place at the United Kingdom Intellectual Property Office's (UK-IPO) London base in Bouverie Street, London, EC4Y 8DP. Deputy Chairmen may occasionally be asked to sit in other locations, including Scotland. The JAC has been asked to create a list of two people suitable for appointment to this position. There is one immediate vacancy. The second is expected during 2009.

This pack contains the information that you need about the appointment. It includes eligibility criteria and the job description. It also describes the selection process that the JAC will follow, with relevant dates and advice on how to prepare for the various stages of this process.

Before you can be considered for appointment, there are eligibility requirements that you must meet. The JAC is also required to assess your character. Before applying you should read these requirements and the guidelines that the JAC uses to assess character. These can be found on our website (www.judicialappointments.gov.uk) along with outline terms and conditions of service and terms of appointment for these posts. You will also need to demonstrate the qualities and abilities required for this office.

The independent JAC selects candidates for judicial office. It does so on merit, through fair and open competition, from the widest range of eligible candidates.

ARE YOU ELIGIBLE?

To be eligible for appointment as Deputy Chairman for the Copyright Tribunal you must meet the following requirements.

Statutory requirement

The key eligibility requirements are for the applicant to:

- satisfy the judicial-appointment eligibility condition on a 5-year basis; or
- be an advocate or solicitor in Scotland of at least 5 years' standing; or
- be a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland at least 5 years' standing; or
- have held judicial office

In order to meet the statutory qualifications for appointment, a solicitor (or a salaried judicial office holder who was formerly a solicitor) must appear on the Roll.

The Tribunals Courts and Enforcement Act (TCE) 2007 has introduced the '**judicial-appointments eligibility condition**'. Where this applies, eligibility for judicial office is no longer based on possession of rights of audience for a specified period. You will have to show that:

- you have possessed a relevant legal qualification;
- for the requisite period; and
- that whilst holding that qualification you have been gaining legal experience.

Relevant Legal Qualification

You have a relevant legal qualification if you are:

A solicitor or barrister or a Patent Attorney registered with the Chartered Institute of Patent Attorneys (CIPA)* or a Trade Mark Attorney registered with the Institute of Trade Mark Attorneys (ITMA)*.

*This is subject to final Parliamentary approval of the Judicial Appointments (Specified and Relevant Qualifications) Order 2008. Anyone with any questions regarding this should contact the Ministry of Justice Judicial Diversity Implementation Team who are responsible for the implementation of the TCE Act 2007. Please contact Philippa Baker on 020 7210 1833.

Legal Experience

In order to be eligible for judicial appointment, you must not only be in possession of the relevant qualification, but must also have been engaged in 'law related activity' whilst holding that qualification.

An activity is considered to be law related activity whether or not it is undertaken for remuneration, and whether or not it is undertaken on a full or part-time basis.

Meaning of Law Related Activity

Each of the following is a relevant law related activity:

- a) The carrying out of judicial functions of any court or tribunal

- b) Acting as an arbitrator
- c) Practice or employment as a lawyer
- d) Advising (whether or not in the course of practice or employment as a lawyer) on the application of the law
- e) Assisting (whether or not in the course of such practice) persons involved in proceedings for the resolution of issues arising under the law
- f) Acting (whether or not on the course of such practice) as mediator in connection with attempts to resolve issues that are, or if not resolved could be, the subject of proceedings
- g) Drafting (whether or not in the course of such practice) documents intended to affect persons' rights or obligations
- h) Teaching or researching law
- i) Any activity that in the relevant decision maker's opinion is of a broadly similar nature to an activity within paragraphs (a) to (h)

Category b) is intended to cover arbitrations where legal disputes are resolved on a reasonably formal, structured basis. For example, it would cover arbitrations governed by the Arbitration Act 1996, and carried out by a person who is accredited by a body such as CEDR (Centre for Effective Dispute Resolution).

Categories d) – g) are also intended to cover activities which are carried out on a reasonably formal, structured basis, for example volunteers who give legal advice in a law centre, or citizens advice bureau. However, it is not intended to cover (say) a person who gives informal advice to friends and neighbours.

Category (e) is intended to cover legal assistance, rather than other kinds of support.

Category (g) is intended to cover drafting which involves legal judgment and skill, such as drafting contracts and leases. It is not intended to cover drafting which may affect rights or obligations, but are essentially administrative tasks, e.g. filling in enforcement orders, or penalty notices.

The purpose of (i) is to cover the possibility of some kinds of law-related activity that might not quite fit within (a) – (h).

Your engagement in law-related activities during a period will be disregarded if the engagement is 'negligible in terms of the amount of time engaged'.

Age

There is no upper or lower age limit for candidates apart from the statutory retirement age of 70. The age at which someone is appointed must allow for a reasonable length of service, usually about three years.

Nationality

You must complete a declaration of your nationality in the Application Form. In order to qualify for this post, you must be a citizen of:

- the United Kingdom; or
- another Commonwealth country; or

- the Republic of Ireland.

Character

The JAC is required by statute to appoint only persons of good character. In order to make these assessments we have developed Good Character Guidance which you can find on our website at www.judicialappointments.gov.uk. You can also write to us to request a copy (see the 'Contacts and Further Information' section of this Information Pack for our contact details).

The Good Character Guidance gives you some indication as to whether anything in your past conduct or present circumstances might affect your application for judicial appointment. You should read it carefully before completing the Application Form.

Good character questions and declarations

You are required to answer a number of questions related to good character in the Application Form and must make appropriate declarations as requested.

Applicants for judicial appointments are not protected by sections 4(2) and 4(3) of the Rehabilitation of Offenders Act 1974. Any convictions which would normally be regarded as having expired under that Act should therefore be declared in writing (Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975). You must provide details of all offences for which you have been convicted or cautioned. Details should include the nature of each offence, date of conviction or caution and the penalty imposed.

Where proceedings of any kind are pending, you should give details of the offence with which you have been charged or the disciplinary process you are subject to and, if known, the date when the case or action may be heard. It is important that you inform us of the outcome of any case or action concluded while your application is under consideration. Similarly, if you are charged with any offence or any action is brought against you after submitting your application you should inform us immediately (see the 'Contacts and Further Information' section of this Information Pack).

In all cases, please provide as much detail as you can and indicate if there are any mitigating factors that you think the JAC should take into account in assessing your good character.

Good character checks

The JAC will also carry out checks on all candidates whom it intends to recommend for appointment. Further information about these checks will be provided separately to relevant candidates.

Failure to have declared any matters that come to light from these checks may prejudice the outcome of your application.

Disqualification

You should note that the House of Commons Disqualification Act 1975 applies to this office.

REASONABLE ADJUSTMENTS

The JAC is committed to considering any reasonable adjustments needed to ensure that you can participate in the selection process fairly. The Application Form asks you to identify any arrangements and adjustments you may require. Requests will be considered on a case-by-case basis and the information given will not be used in selection decisions.

If you are recommended for appointment, reasonable adjustments will be considered if you have a disability under the meaning of the Disability Discrimination Act, as they are for serving judges who develop an impairment or long-term health condition. Any reasonable adjustments to enable you to take up appointment will be discussed separately with you by the Ministry of Justice after the JAC has made its recommendation.

JOB DESCRIPTION

The following information has been provided by the Ministry of Justice.

Deputy Chairman of the Copyright Tribunal

The Copyright Tribunal is part of the UK Intellectual Property Office, an executive agency of the Department for Innovation, Universities and Skills.

Main Activities

- Under the Copyright, Designs and Patents Act 1998 the Copyright Tribunal has the statutory task of conclusively establishing the facts of a case and of coming to a decision which is reasonable in the light of those facts. Its decisions can be appealed to the High Court only on points of law. (Appeals on a point of law against decisions of the Tribunal in Scotland are to the Court of Session.)
- The Deputy Chairman, in consultation with the Chairman, will take a hearing which is conducted subject to any direction given by the Deputy Chairman.
- The Deputy Chairman provides the guidance on the law and practice at the hearing and has a duty to give guidance to the parties and their representatives in cases where they are not legally represented. Usually the parties are represented by legal advisors and counsel, however legal representation is not a requirement. The Deputy Chairman will also give guidance to the lay members on points of law and practice.
- The Act and Rules provide for parties to state their cases at an oral hearing. Hearings of the Tribunal are normally in public and a transcript of the proceedings is usually taken. An oral judgement may be given at the hearing with the decision confirmed later in writing.
- The Tribunal's jurisdiction is such that anyone who has unreasonably been refused a licence by a collecting society or considers the terms of an offered licence to be unreasonable may refer the matter to the Tribunal. The Tribunal has the power to decide some matters referred to it by the Secretary of State and other matters even though collecting societies are not involved. For example, it can settle disputes over the royalties payable by publishers of television programme listings to broadcasting organisations.
- In general, only the person seeking a copyright licence can refer disputed matters to the Tribunal. However, where the Tribunal has already made a decision in a particular area, the collecting society as well as the licensee may apply to the Tribunal to change that decision,

usually on the grounds that circumstances have changed materially since the Tribunal last considered the matter. Any party to a Tribunal hearing may appeal against its decision, but only on points of law.

- The Tribunal is administered by a Secretary, who is an employee of the UK Intellectual Property Office and acts as a formal channel of communication for the Tribunal. The Secretary plays no part in the decision making process and the Tribunal carries out its work and comes to its decisions completely independently of the Office or any other part of Government.
- Hearings last, on average, from about 5 to 10 days, however due to the nature of the work there are no guarantees of work in any year.
- Though knowledge of copyright law and of the law surrounding Intellectual Property would be useful this is not a requirement. Experience of general commercial litigation and knowledge of commercial law would also be desirable.

Further Information

Further information about this post can be found on the JAC website www.judicialappointments.gov.uk

THE SELECTION PROCESS

Application form

Details of the qualities and abilities against which you will be assessed are set out in the Application Form. You can draw on your full range of work and personal experience to demonstrate these qualities and abilities including, for example, voluntary work or any publication to which you have contributed. Please be specific in giving information.

Timetable

Closing date for applications	20 November 2008
Provisional dates for selection days	9 - 11 February 2009

Shortlisting

If you are shortlisted, you will be invited to a selection day. Further details will be sent with your invitation to attend. We are sorry that we are not able to provide written explanations to candidates who are not shortlisted.

References

We may seek information from people who are well placed to comment on how you meet the qualities and abilities. Referees are usually approached before shortlisting takes place and will be encouraged to draw on appraisal material if it is available. The material provided by referees will usually inform decisions at shortlisting/selection day and final selection decisions by Commissioners.

Candidate nominated

You are invited to nominate up to **three** referees who know you well either personally or professionally. **We strongly recommend that you check with your referee that they are not conflicted in anyway.**

JAC nominated

The JAC may also request references from those identified in the section of this pack titled 'JAC nominated referees'.

Please provide the name, title, position and address of your relevant judicial and professional referees. You may also tell us if you do not wish us to approach the relevant professional referee now, but you must give reasons. If you do not currently hold a judicial office and have excluded your relevant professional referee, you must suggest an alternative referee who is familiar with your work.

Conflict of interest

The Judicial Appointments Commissioners are listed at the back of this pack. You should not nominate a Commissioner as a referee. You should also state in the Application Form if you are in any way related to, or known to, any of the Commissioners and give details.

Outcome of the selection exercise

You will be advised of the outcome of your application in writing.

If you are unsuccessful at the selection day stage of the process, you can request a written explanation. You should make this request within six weeks of the date of the letter informing you that you have not been successful. We will aim to respond to your request within four working weeks.

Complaints procedure

If you are dissatisfied with any aspect of the way your application has been handled, please refer to the JAC's published complaints procedure, which is available from our website, or in writing on request.

CONTACTS AND FURTHER INFORMATION

Obtaining an application form

All the information about applying for this selection exercise is available at www.judicialappointments.gov.uk (current selection exercises).

The Application Form for this selection exercise can be obtained electronically by downloading it from the website.

Please contact the Judicial Appointments Applications Service (JAAS) team at the JAC if you wish to request a hard copy of the Application Form or Information Pack, or if you have any questions about submitting your application.

If you need the form and/or pack in a different format, for example Braille, please contact the JAAS team.

Acknowledgement of your application

You should receive an acknowledgement of your application within five working days of receipt. If you do not, please contact the JAAS team by telephone or e-mail.

Contact details

1. JAAS team:

Reference: 00394 (Please use this reference on all communications)

Judicial Appointments Commission
2nd Floor, Steel House
11 Tothill Street
London
SW1H 9LH

DX 149822 WESTMINSTER 6

E-mail: jaas@jac.gsi.gov.uk

Telephone: 020 3334 0123

2. Selection Exercise Team:

Mary D’Arcy	020 3334 0304	Assistant Director
Maggie Garrett	020 3334 0305	Deputy Selection Exercise Manager

E-mail: mary.d’arcy@jac.gsi.gov.uk

E-mail: maggie.garrett@jac.gsi.gov.uk

Fax: 020 3334 0133

3. Director:

Susan Bush 020 3334 0566

E-mail: susan.bush@jac.gsi.gov.uk

JAC NOMINATED REFEREES

The JAC may also request references from those categories listed below.

Judicial referee(s)

If you hold a judicial office not in this list, please contact the JAC so that we can consider who should be nominated as your judicial referee.

- If you are a member of a Tribunal, the Tribunal President or equivalent.
- If you are a Recorder, the Resident Judge, the Designated Civil Judge or the Designated Family Judge in the court(s) where you sit most often.
- If you are a Deputy District Judge, the local Designated Civil Judge.
- If you are a Deputy District Judge of the Principal Registry of the Family Division (PRFD), the Senior District Judge (PRFD).
- If you are a Deputy District Judge (Magistrates’ Courts), the Senior District Judge (Magistrates’ Courts).
- If you are a Sheriff, the Sheriff Principal (Scotland only).

Professional referee

- If you are a solicitor, your managing partner or relevant equity partner.
- If you are a barrister, your Head of Chambers or senior member of the Bar Library (Northern Ireland).
- If you are employed, your line manager or equivalent.
- If you are an advocate, the Dean of the Faculty of Advocates (Scotland only).

JAC COMMISSIONERS

Chairman of the JAC

Baroness Usha Prashar CBE

Members

Mrs Justice Jill Black DBE

Dame Lorna Boreland-Kelly DBE

Professor Dame Hazel Genn DBE QC

Lady Justice Heather Hallett DBE

Her Honour Judge Frances Kirkham

Sir Geoffrey Inkin OBE

Mr Edward Nally

Ms Sara Nathan OBE

District Judge Charles Newman

His Honour Judge David Pearl

Mr Francis Plowden

Ms Harriet Spicer

Mr Jonathan Sumption OBE QC

Lord Justice Roger Toulson