

TERMS AND CONDITIONS OF SERVICE AND TERMS OF APPOINTMENT

FEE-PAID DEPUTY CHAIRMAN OF THE COPYRIGHT TRIBUNAL

INTRODUCTION

1. Section 145 of the Copyright, Designs and Patents Act 1988, as amended, provides for the appointment of Deputy Chairmen by the Lord Chancellor after consultation with the Scottish Ministers and Secretary of State. Section 146 states that, subject to the provisions in the Act, each “Deputy Chairman” is to hold and vacate his or her office in accordance with the terms of their appointment.
2. This memorandum contains information about the terms and conditions of appointment, which should be understood and agreed by all those accepting 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.

NATURE OF THE POST

3. Deputy Chairmen hear and determine proceedings before the Copyright Tribunal.

LOCATIONS

4. Hearings usually take place at the UK-IPO Office’s London base in Bouverie Street, London, EC4Y 8DP. Deputy Chairmen may however, be asked to sit in other locations, including Scotland.

FREEMASONRY

5. 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

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

RENEWAL OF APPOINTMENT

7. 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 eight grounds for non-renewal:

- a. incapacity;
- b. being, in the Lord Chancellor’s opinion, unable or unfit to perform the duties of the office; 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. he or she has become bankrupt or made an arrangement with his or her creditors or, in Scotland, his or her estate has been sequestrated or he or she has executed a trust deed for his creditors or entered into a composition contract;
- g. part of a reduction in numbers because of changes in operational requirements; and
- h. part of a structural change to enable recruitment of new part-time office holders.

8. All decisions not to renew on grounds (a) - (f) are taken by the Lord Chancellor with the concurrence of the relevant Chief Justice, Scottish Ministers and Secretary of State. Such decisions are taken following an investigation conducted by a judge, who will report to the Lord Chancellor, the Scottish Ministers, Secretary of State and the relevant Chief Justice.
9. All decisions not to renew on grounds (g) or (h) 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 after consultation with the Scottish Ministers and Secretary of State and with the concurrence of the Lord Chief Justice.
10. Deputy Chairmen of the Copyright Tribunal 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 Chief Justice will not normally extend the appointment of a fee-paid Chairman beyond the age of 70.

ARRANGEMENTS FOR TRAINING & SITTINGS

12. During the course of their appointment office holders are required to undertake such training as may be arranged and required.
13. The frequency of sittings will depend upon the workload of the Tribunal and on the commitments of the office holder. This appointment carries an obligation to sit at any venue in the exercise of the relevant jurisdiction.
14. An office holder's workload is arranged, in consultation with him or her as appropriate, by the Tribunal administration. Deputy Chairmen of the Copyright Tribunal should observe the sitting and other requirements of the hearing centres at which they sit.

CONFLICT OF INTEREST

15. 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 centre, if he or she is liable to be embarrassed in either capacity by doing so.
16. As a general rule, it is undesirable for judicial office holders who are solicitors to sit at a tribunal or hearing centre 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 judicial office holder who is a solicitor does sit at such a hearing centre or a tribunal, then 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.

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.
17. 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

18. 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.
19. 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.
20. 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.
21. 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.
22. 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

23. Under S.146 of the Act, the Lord Chancellor may remove a Deputy Chairman on specified grounds. The grounds for removal from appointment are as follows:
- a. the office holder has become bankrupt or made an arrangement with their creditors or in Scotland their estate has been sequestrated or they have executed a trust deed for their creditors or entered into a composition contract;
 - b. the office holder is incapacitated by physical or mental illness;
 - c. that in the Lord Chancellor's opinion, they are otherwise unable or unfit to perform the duties of the office, including persistent failure to comply with sitting requirements (without good reason); including
 - d. failure to comply with training requirements and sustained failure to observe the standards reasonably expected from a holder of such office;
24. All decisions to remove are taken by the Lord Chancellor with the concurrence of the Lord Chief Justice, Scottish Ministers and the Secretary of State. Such decisions are taken in accordance with the procedures contained in the Regulations referred to at paragraph 22 above.

DISQUALIFICATION

25. Fee-paid members are precluded by statute from serving concurrently as Members of Parliament, etc. A fee-paid Chairman 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

26. The fees and allowances are determined by the Secretary of State of Department for Innovation, Universities and Skills. The appointment is non-salaried and non-pensionable. A Deputy Chairman will receive a fee for each day sat. The current fee is £700 + VAT per day. The fees are revised from time to time.
27. 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.
28. Judicial office holders who are private sector employees are expected to be open and transparent with their 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.

TRAVELLING ETC EXPENSES

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 Copyright 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.

MEDIA GUIDANCE

30. 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.

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