

## **TERMS OF CONDITIONS OF SERVICE AND TERMS OF APPOINTMENT**

### **FEE-PAID “APPOINTED PERSON” UNDER THE TRADE MARKS ACT 1994**

#### **INTRODUCTION**

1. Section 77 of the Trade Marks Act 1994, as amended, provides for the appointment of “Appointed Persons” by the Lord Chancellor. Section 77 states that, subject to the provisions in the Act, each “Appointed Person” is to hold and vacate office in accordance with the terms of his or her 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. Fee-paid “Appointed Persons” hear ex parte appeals and inter partes appeals, from decisions by the Registrar of Trade Marks’ Hearing Officers.

#### **LOCATIONS**

4. Hearings take place usually at the UK-IPO Office’s London base in Bouverie Street, London, EC4Y 8DP. “Appointed Persons” will, 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 “Appointed Person” under the Trade Marks Act 1994 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.
8. There are eight 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. that the office holder 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/her creditors or entered into a composition contract;
  - g. part of a reduction in numbers because of changes in operational requirements;
  - h. part of a structural change to enable recruitment of new fee-paid "Appointed Persons".
9. All decisions not to renew on grounds (a) – (f) 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, the Secretary of State and the Lord Chief Justice.
  10. 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 with the concurrence of the Secretary of State and the Lord Chief Justice.
  11. Fee-paid "Appointed Persons" may choose to end their appointment by resignation or by declining to accept renewal on completion of a term. Resignation must be in writing and with 6 months' notice, which may be relaxed in exceptional circumstances.

#### **UPPER AGE LIMIT**

12. The Lord Chief Justice will not normally extend the appointment of a fee-paid "Appointed Person" beyond the age of 70.

#### **TRAINING**

13. Newly appointed fee-paid office holders are not eligible to sit until they have attended and satisfactorily completed the initial induction course organised by the Patent Office. During the course of their appointment office holders are required to undertake such further ongoing training as may be arranged and required.

#### **ARRANGEMENTS FOR SITTINGS**

14. A fee-paid office holder 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 Patent Office and on the commitments of the office holder. Due to the nature of the workload, no guarantee can be given on the number of sitting days that will be offered to post holders. However, subject to overriding operational requirements, all post holders will be allocated work on the same basis. An office holder's workload is arranged, in consultation with the office holder.

## 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.
16. 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.
17. As a general rule, it is undesirable for a judicial office holder who is a solicitor to sit at a tribunal or hearing centre where they regularly practise. 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 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.
18. 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.
19. 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

20. 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.

21. 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.
22. 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.
23. 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.
24. 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**

25. Under S.77 of the Act, the Lord Chancellor may if he thinks fit terminate the appointment of a fee-paid "Appointed Person" on specified grounds.

There are three grounds for removal from appointment:

- a. he/she has become bankrupt or made an arrangement with his/her creditors or, in Scotland, his/her estate has been sequestrated or

he/she has been executed a trust deed for his/her creditors or entered into a composition contract, or;

- b. he/she is incapacitated by physical or mental illness;
  - c. or if he is in the opinion of the Lord Chancellor otherwise unable or unfit to perform his/her duties as an appointed person.
26. All decisions to remove are taken by the Lord Chancellor with the concurrence of the Lord Chief Justice and the Secretary of State. Such decisions are taken in accordance with the procedures contained in the Regulations referred to at paragraph 24 above.

## **DISQUALIFICATION**

27. Fee-paid members are precluded from serving concurrently as a Member 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 to the European Parliament. The Lord Chancellor should be consulted if doubts arise about any particular circumstances.

## **FEES**

28. 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 fee-paid "Appointed Person" will receive a fee for each day sat. The current fee is £600 + VAT per day. The fees are revised from time to time.
29. 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.
30. 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 EXPENSES, ETC**

31. 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 administrative staff. 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**

32. 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**

33. Judicial office-holders are welcome to consult the Judicial Office for England & Wales 020 7073 4859 on any matters relating to judicial office. Media enquiries should be directed to the Lord Chief Justice's Judicial Communications Office on 020 7947 6438. Enquiries relating to remuneration, sittings and training should be directed to the Trade Mark Registry.

Ministry of Justice  
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