

**FEE PAID MEMBER OF THE PANEL OF CHAIRMEN OF THE COMPETITION  
APPEAL TRIBUNAL  
OUTLINE OF TERMS AND CONDITIONS OF SERVICE**

Introduction

1. Appointments to the panel of fee paid chairmen of the Competition Appeal Tribunal (the Tribunal) are made by the Lord Chancellor under section 12(2)(b) of the Enterprise Act 2002. Under Schedule 2 members of the panel of chairmen of the Tribunal hold and vacate their office in accordance with their terms of appointment.
2. This document contains information about the terms and conditions of appointment, which should be understood and agreed by all those accepting appointment. These terms and conditions are correct as at the date given below, but may in some circumstances be subject to change.

Locations

3. The Tribunal generally sits in London for cases involving England and Wales – although on occasion it may be necessary to sit outside London if there is a particular regional interest in a case. Scottish cases are usually heard in Edinburgh and those cases concerning Northern Ireland are generally heard in Belfast.

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, a person who has been offered a fee paid judicial appointment for the first time is also asked as a condition of appointment whether he or she belongs to the Freemasons, and if not, that he or she notifies the Lord Chancellor in the event that he or she subsequently joins them. It must be expected that this information may be included in a public register.

Duration of Appointment

5. Appointment to the panel of chairmen is for a period of 5 years, renewable for a further 3 years (Schedule 2 sub paragraph 2(2) of the Enterprise Act 2002).

Renewal of Appointment

6. At the end of the initial five-year appointment, renewal for a further period of three years is automatically 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) 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 members of the panel of chairmen.
7. All decisions not to renew on grounds (a) – (e) are taken by the Lord Chancellor with the concurrence of the relevant Chief Justice. Such decisions are taken following an investigation conducted by a judge who will report to the Lord Chancellor and the relevant Chief Justice.
8. 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, after consultation with the President of the Tribunal and with the concurrence of the relevant Chief Justice.
9. Fee paid chairmen 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 chairman will not normally be extended beyond the age of 70.

#### Arrangements for Training and Sittings

11. Newly appointed members of the panel of chairmen are not eligible to sit until they have attended and satisfactorily completed the initial induction course organised by the President of the Tribunal. During the course of their appointment office holders are required to undertake such further ongoing training as may be arranged and required by the President.
12. A member of the panel of chairmen is called upon by the President of the Tribunal to sit and to undertake other prescribed duties as the need arises. The frequency of sittings 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. There is no guarantee of a minimum number of sitting days.

#### 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 fee paid 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. As a general rule, it is undesirable for fee paid judicial office holders who are solicitors to sit at a tribunal or hearing centre where they, or any partner or employee of theirs, regularly practise. This is to help avoid them adjudicating

in cases from which they would have to stand down. If a fee paid judicial office holder who is a solicitor does sit at such a hearing centre or a tribunal, then the Lord Chancellor and the relevant 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) 2 WLR 870]; and *Director General of Fair Trading v Proprietary Association of Great Britain and Another* [CA, 21 December 2000]; and
  - (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. Fee paid 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. (*Timmings v Gormley* [(2000) 2 WLR 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. Without prejudice to the paragraphs below, a member of the panel of chairmen should notify the relevant Chief Justice and the President of the Tribunal 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 member of the panel of chairmen should also notify the relevant Chief Justice and the President if they get into serious financial difficulties, particularly if legal proceedings appear to be likely, or have actually been, initiated. They should also inform the relevant Chief Justice and the 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 relevant Chief Justice and 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, (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) whether before or after they have been authorised to sit as a fee paid office holder, they should report the matter at once to the relevant Chief Justice and President and should keep them 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 relevant 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 relevant 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.
20. 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 relevant 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.
21. The exercise of the Lord Chancellor's and the relevant 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 relevant 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. Under Schedule 2 of the 2002 Act, the Lord Chancellor may remove an office holder on the grounds of incapacity or misbehaviour. Consistently with this provision, grounds for removal are as follows:
  - (a) incapacity; and
  - (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.
23. All decisions to remove are taken by the Lord Chancellor with the concurrence of the relevant Chief Justice. Such decisions are taken following

an investigation conducted by a judge who will report to the Lord Chancellor and the relevant Chief Justice.

### Disqualification

24. Members of the panel of chairmen are precluded by statute (House of Commons Disqualification Act 1975) from serving concurrently as Members of Parliament, etc. A member of the panel is expected to submit his 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.

### Fees

25. The fees and allowances are determined by the Secretary of State for Business, Enterprise and Regulatory Reform (BERR). The appointment is non-salaried and non-pensionable. A fee paid member of the panel of Chairmen will receive a fee for each day sat. The fees are revised from time to time.
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. 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.

### Income Tax and National Insurance Contributions

28. Members of the panel of chairmen 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 Competition Service's payroll system and the net fee paid to the office holder. Fees are not subject to VAT. (The Competition Service is the service organisation for the Competition Appeal Tribunal – holding funds/other assets on its behalf and employing staff).
29. Office holders may wish to be aware that in certain circumstances, the Inland Revenue 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 II of Schedule D. Office holders who want further details on this practice should contact their Inland Revenue Office or see [www.inlandrevenue.gov.uk/manuals/semanual/se03002.htm](http://www.inlandrevenue.gov.uk/manuals/semanual/se03002.htm). The Ministry of Justice has, however, been advised by the Inland Revenue that it is unlikely that fee paid appointments to membership of the panel of chairmen 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 Competition Service is able to process the payments through its payroll system.

30. In the event that the practice is nevertheless adopted, in exceptional cases, the Inspector will issue a ‘No Tax’ code to the Competition Service 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 32] since the adoption of this practice does not affect the liability to pay the contributions.
31. Although it is the responsibility of a member of the panel of chairmen to arrange matters with the Inland Revenue National Insurance 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 refund of excess contributions made in a previous year. Further details may be obtained by contacting the Deferment Group at the Inland Revenue National Insurance Contributions Office, Longbenton.
32. It would be helpful, and avoid confusion, if in any correspondence with the Inland Revenue regarding fees and allowances attributable to any fee paid office, and with the Inland Revenue National Insurance Contributions Office regarding deferment of payment or refund of National Insurance contributions, office holders would give as the address for the fee paying authority the Competition Service and mention the fact that they are office holders, and not employees of the Ministry of Justice or BERR.

#### Travelling Expenses etc

33. Travelling expenses may be payable in connection with sittings, attendance at training courses, etc. The rules governing and rates of these allowances will be determined by the Competition Service and may change from time to time.

#### Media Guidance

34. Guidance on relations with the media will be provided by the Judicial Communications Office (JCO). The JCO provides communications to support 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. In most matters involving the work of the Competition Appeal Tribunal issues involving the media will be handled by or in consultation with the President and the Registrar of the Tribunal.

Advice

35. Judicial office holders are welcome to consult the Ministry of Justice or the Judicial Office for England & Wales (as appropriate) on any matters relating to judicial office. Judicial media enquiries should be directed to the Lord Chief Justice's Judicial Communications Office on 020 7947 6438. Enquiries relating to the operation of the Tribunal should be directed to the Registrar of the Tribunal.

**Ministry of Justice**  
**April 2009**