

# **RECORDER (CIVIL) TERMS AND CONDITIONS**

## **Introduction**

1. Section 21 of the Courts Act 1971<sup>1</sup> provides for the appointment of Recorders by the Crown on the recommendation of the Lord Chancellor to act as part-time judges of the Crown Court and to carry out such other judicial functions as may be conferred on them.
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. Recorders can sit in both the Crown Court and county courts. Their jurisdiction is broadly similar to that of a Circuit Judge. Recorders can also be authorised by the Lord Chief Justice under s.9(1) of the Supreme Court Act 1981 to sit in the specialist civil jurisdictions of the High Court, including Chancery Division, the Technology and Construction Court and the Mercantile Court. They are assigned to the Royal Courts of Justice, but may be asked to sit in regional civil centres according to business need. Because of the complex caseload heard before the various specialist courts, it may not always be possible for Recorders to be offered the minimum of 15 days a year, which is the customary minimum sitting requirement for Recorders appointed to sit in the Crown and County Courts.

## **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 a 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.

## **Oaths**

5. New Recorders will be required to take the Oath of Allegiance and the Judicial Oath before being permitted to sit. These oaths must be taken before a judge of the Court of Appeal or of the High Court, or a Circuit Judge<sup>2</sup>. This will be arranged after appointment by agreement between the Recorder and the Regional Director's Office, once the Royal Warrant has been issued.

## **Duration of Appointment**

6. An appointment as a Recorder is for a (renewable) period of five years, subject to the upper age limit.

## **Renewal of Appointment**

7. Recorder appointments will be automatically extended by the Lord Chancellor under s.21(4) of the Courts Act 1971 for further successive terms of five years, 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. The grounds for non-renewal are:
  1. incapacity;
  2. misbehaviour; including:
    - ◆ persistent failure to comply with sitting requirements (without good reason) where these are relevant;
    - ◆ failure to comply with training requirements;
    - ◆ sustained failure to observe the standards reasonably expected from a holder of such office;
  3. part of a reduction in numbers because of changes in operational requirements;
  4. part of a structural change to enable recruitment of new Recorders.

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<sup>1</sup> As amended by Schedule 10 to the Courts & Legal Services Act 1990, etc.

<sup>2</sup> Section 22(2) of the Courts Act 1971.

9. All decisions not to renew on grounds 1-2 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.

10. All decisions not to renew on grounds 3 or 4 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 Lord Chief Justice.

11. Recorders may choose to end their appointment by resignation or by declining to accept renewal on completion of a term.

#### **Upper Age Limit**

12. The Lord Chief Justice will not normally extend a Recordership beyond the day on which the Recorder reaches 70.

#### **Training**

13. Before being authorised to sit in the specialist jurisdictions of the High Court and county court, Civil Recorders will be required to complete a civil induction programme organised by the Judicial Studies Board as agreed by the President of the Queen’s Bench Division and the Chancellor.

14. Once a Civil Recorder has accepted an invitation for a particular course, he or she should not withdraw from that course other than in the event of unexpected or pressing necessity. If he or she does so, he or she may not be offered a place on a future JSB course. **The training and sitting commitment undertaken by prospective or serving Recorders is a personal one and the Lord Chancellor and the Lord Chief Justice regard it as a Recorder's personal responsibility (and not that of his/her clerk/secretary) to ensure that he or she meets their obligations. If a Recorder instructs another person to make arrangements on his or her behalf, they must make clear to them the priority which must be given to these training and sitting commitments.**

#### **Attendance at Judicial Seminars**

15. The Lord Chancellor and the Lord Chief Justice expect Recorders, when invited, to attend one day or residential continuation training arranged by the Judicial Studies Board, as well as one-day regional conferences.

#### **Arrangements for Sittings**

16. The Courts Act 1971 imposes no limit on the territorial jurisdiction of Recorders; they may, therefore, sit anywhere in England and Wales, although for administrative reasons they will be based at the RCJ but can be deployed throughout the regions by agreement with the relevant Regional Director’s Office. The appointment carries an obligation to sit at any civil court centre in the country in the exercise of the relevant jurisdiction. It should not be seen as conferring an expectation to any given level of future sittings, nor of any level of future sittings at a particular location.

17. Section 21(3) of the Courts Act 1971 requires the appointments of Recorders to specify the term for which they are appointed and the frequency and duration of the occasions during that term of appointment for which they will be required to be available to undertake their judicial duties, unless officially notified to the contrary.

#### **Sitting Days**

18. While Civil Recorders may be required to sit up to 30 days a year, the nature of the work is such that they may not be required to sit at all during the year. Sitting requirements will be determined according to business needs, and HM Courts Service staff will be expected to take into account the circumstances of Civil Recorders when drawing on their services. Civil Recorders are expected to give any such request priority.

### **Honorary Recorderships**

19. Section 54 of the Courts Act 1971 empowers the council of a district which has been granted the status of a borough to appoint a person (who must normally be a Circuit Judge or Recorder) to be an Honorary Recorder of the Borough. These appointments are solely within the discretion of the councils concerned and are not a matter for the Lord Chancellor. Should Recorders accept such appointments it may not be possible for the Lord Chief Justice to agree in every case that they should have the right to spend all, or even part, of their time sitting in that borough.

### **Clash of Commitments**

20. Once a Recorder has agreed his or her sitting dates with the appropriate Head of Division/listing office, it should be exceptional for them to withdraw from their engagement and they will be expected to keep these dates free of other commitments. If there should be any unexpected clash between planned judicial sittings and a professional engagement, a Recorder should refuse the latter provided that they can do so without prejudicing the interests of their lay clients. If this is impossible, the professional commitment will have to take priority, but as much notice as possible should be given to HM Court Service to improve the chances of a replacement being found.

### **Conflict of Interest**

21. 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 Recorder, or to appear, at a court or elsewhere if he or she is liable to be embarrassed in either capacity by doing so. In particular they should not in any circumstances appear in any court before a jury which includes members of a jury panel serving at that court when they sat there as a Recorder, or vice versa.
22. As a general rule, it is undesirable for a fee-paid judicial office holder who is a solicitor to sit at a court 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 court, then the Lord Chancellor and the Lord Chief Justice regard it as the responsibility of the judicial office holder (and not that of the court staff) to ensure, as far as possible, that he or she avoids any potential conflict of interest which might require him or her to stand down from a particular case.
23. Fee-paid judicial office holders:
- 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;
  - 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.”
  - 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 have such an interest.
24. 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*. A Recorder who is an MP, Parliamentary candidate or local Councillor should not sit as a Recorder within their own constituency or the area covered by the Council. 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 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. Fee-paid office holders hold office only when they are serving judicially and should not use their appointment as a means of pursuing personal, professional or commercial advantage.

## **Dress**

25. Recorders will be expected to wear their normal professional robes when sitting. Wigs are not worn in civil cases.

## **Judicial Conduct**

26. The public both deserves and expects the highest standards of conduct from those who hold judicial office. Without prejudice to the paragraphs below, a Recorder 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.
27. A Recorder 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.
28. 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 itself 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 hold judicial office. 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.
29. 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.
30. The exercise of the Lord Chancellor's and the Lord Chief Justice's disciplinary powers is governed by regulations made by the Lord Chief Justice under sections 115 and 117 of the Constitutional Reform Act 2005. The regulations 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**

31. Section 21(6) of the Courts Act 1971 provides that the Lord Chancellor may if he thinks fit terminate the appointment of a Recorder on specified grounds. There are two grounds for removal from appointment:
1. incapacity;
  2. misbehaviour; including:
    - ◆ failure to comply with training requirements;
    - ◆ persistent failure to comply with sitting requirements (without good reason);
    - ◆ sustained failure to observe the standards reasonably expected from a holder of such office.

**32. 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 30 above.**

### **Fees**

33. The appointment is non-salaried and non-pensionable. Recorders will receive a fee for each day sat. These fees are revised from time to time. In accordance with the recommendation of the Senior Salaries Review Body (SSRB) fees are calculated by dividing the salary for the equivalent full-time office by 220. The effect of this divisor is that a pro rata allowance for annual leave and public and privilege holidays is built into the daily fee. There is also a daily payment equivalent to half the daily fee rate for sitting in with a Circuit Judge and attendance at the Judicial Studies Board residential courses. Payment for cancelled sittings will, however, only be allowed in special circumstances, for example, where the Recorder has already travelled to the place where they were due to sit before being notified of the cancellation. Recorders authorised to sit in the High Court are paid the daily fee appropriate to a Deputy High Court Judge.
34. 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 full time public office holders and public servants paid by Central Government will receive no remuneration for any fee-paid judicial offices held concurrently.
35. 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.

### **Income Tax and National Insurance contributions**

36. Recorders 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 Justices' payroll system and the net fee paid to the office-holder. Fees are not subject to VAT.
37. Office-holders may wish to be aware that in certain circumstances, HM Revenue & Customs 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 HM Revenue & Customs Office or see the [website](#). The Ministry of Justice has, however, been advised by HM Revenue & Customs that it is unlikely that fee-paid appointments to Recorder 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 Ministry of Justice is able to process the payments through its payroll system.
38. In the event that the practice is nevertheless adopted, in exceptional cases, the Inspector will issue a 'No Tax' code to the Ministry of Justice 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 39 below since the adoption of this practice does not affect the liability to pay the contributions.
39. Although it is the responsibility of a fee-paid office holder to arrange matters with HM Revenue & Customs 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 HM Revenue & Customs National Insurance Contributions Office, Longbenton.

40. It would be helpful, and avoid confusion, if in any correspondence with HM Revenue & Customs regarding fees and allowances attributable to any fee-paid office, and with HM Revenue & Customs 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 appropriate Tribunal or Regional Office for Court based judiciary, and mention the fact that they are office holders, and not employees of the Ministry of Justice.

#### **Travelling and Night Subsistence Allowances**

41. Travelling expenses and in certain circumstances night subsistence allowances may be payable in connection with sittings outside of London, attendance at training courses etc. Details of the rules governing the payment of these allowances will be supplied by the appropriate listing office. 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**

42. 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.

#### **Media Guidance**

43. 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](mailto:press.enquiries@judiciary.gsi.gov.uk) . The out of hours pager number is 07659 550652.

#### **Advice**

44. Following appointment, Judicial office holders are welcome to consult the Ministry of Justice or the Judicial Office for England and Wales (as appropriate) on any matters relating to their office. Judicial training enquiries should be directed to the Judicial Studies Board on 020 3334 0682 and media enquiries to the Lord Chief Justice's Judicial Communications Office on 020 7947 6438.

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