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Information Pack:

00470:Chairman of the Copyright Tribunal

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INTRODUCTION

The Judicial Appointments Commission (JAC) is now inviting applications for the fee paid post of Chairman of the Copyright Tribunal. The closing date for applications is noon on **25 March 2010**. This is a specialist fee paid post, hearing cases concerning the terms and conditions of copyright licences. Hearings normally take place in London but the Chairman may, on occasion, be asked to sit in other locations, including Scotland. The Chairman will be expected to devote up to 25 days per year to the Tribunal; this includes pre-reading time and the writing up of decisions, as well as actual sittings. Individual hearings are unlikely to exceed 5 days duration.

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.

The JAC is also currently inviting applications for the post of Specialist Circuit Judge - Judge of the Patents County Court, for which there is a separate information pack. If eligible, you are welcome to apply for both posts. Should you be successful in both, arrangements will be made for you to hold both posts concurrently.

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 this post. 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 a Chairman of the Copyright Tribunal you must meet the following requirements.

Statutory requirement

The Chairman of the Copyright Tribunal is appointed by the Lord Chancellor under section 145 of the Copyright, Designs and Patents Act 1988 as amended by paragraph 20 of Schedule 10 to the Tribunals, Courts and Enforcement Act 2007.

To be eligible for appointment you must -

- (a) be a person who satisfies the judicial-appointment eligibility condition on a 5-year basis; or
- (b) be an advocate or solicitor in Scotland of at least 5 years' standing;
- (c) be a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least 5 years' standing; or
- (d) have held judicial office.

The Tribunals, Courts and Enforcement Act (TCE) 2007 has introduced the '**judicial-appointment 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
- whilst holding that qualification you have been gaining legal experience.

Relevant qualification

You have a relevant qualification if you are:

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

You will be considered eligible as a solicitor when your name is first entered on the Roll kept under section 6 of the Solicitors Act 1974. You will be considered eligible as a barrister:

- a) when you have completed pupillage in connection with becoming a barrister or
- b) if you are not required to undertake pupillage in connection with becoming a barrister, when you are called to the Bar of England and Wales.

When applying for a judicial appointment under b) you will need to provide details in the Application Form of why you are not required to undertake pupillage.

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.

Meaning of law related activity

An activity is considered to be a 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.

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 in 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 makers opinion is of a broadly similar nature to an activity within paragraphs (a) to (h)

The Ministry of Justice has provided the following guidance

Category b) is intended to cover arbitration where legal disputes are resolved on a reasonably formal, structured basis. For example, it would cover arbitration 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'.

Non-statutory requirement

The Lord Chancellor expects that applicants will normally have expertise in the field of copyright/intellectual property (IP) law or commercial law.

Age

There is no upper or lower age limit for candidates apart from the statutory retirement age of 70. It is the Lord Chancellor's policy that the age at which someone is appointed must allow for a reasonable length of service before retirement, usually about five 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 recommend 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.

Candidates 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 1995, as they are for serving judges. Any reasonable adjustments to enable you to take up appointment will be discussed separately with you by the Ministry of Justice after the Lord Chancellor has accepted the recommendation made by the JAC.

JOB DESCRIPTION

The Ministry of Justice has provided the following information.

CHAIRMAN OF THE COPYRIGHT TRIBUNAL

Purpose of office

1. The Copyright Tribunal was established by the Copyright, Designs and Patents Act 1988. The main function of the Tribunal is to decide, where parties cannot agree between themselves, the terms and conditions of licences offered by, or licensing schemes operated by, collective licensing bodies in the copyright and related rights area.
2. Substantive hearings are taken by a Tribunal consisting of the Chair or Deputy Chair and at least two lay members. Procedural hearings will be taken by the Chair or the Deputy Chair sitting alone.

Location

3. Hearings take place usually at the UK Intellectual Property Office's London base at 21 Bloomsbury Street, London WC1B 3HF. The Chairman may however, be asked to sit in other locations, including Scotland.

Main activities

4. The 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 Chair will also give guidance to the lay members on points of law and practice.
5. 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.

Notes on jurisdiction

6. 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.)
7. 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 also has the power to decide 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.

Other information

8. Depending on the circumstances, only the person seeking a copyright licence or their representative body (e.g. a trade association) can make a referral to the Copyright 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.
9. 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.

10. New rules of procedure for the Copyright Tribunal are expected to be introduced in April 2010. The new rules are intended to make the hearings more focussed and shorter. Future hearings are unlikely to exceed 5 days and may be considerably shorter in duration. Due to the nature of the work there are no guarantees of workload in any year.

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

Further information

The full terms and conditions of service and terms of appointment, can be found on the JAC website www.judicialappointments.gov.uk.

CONFLICT OF INTEREST

You will need to determine that the performance of your duties as Chairman of the Copyright Tribunal (if appointed) will not give rise to a conflict of interest (whether actual or apparent) arising out of any other employment or professional activity in which you are or have been engaged or any office that you may hold or have held. Please refer to paragraphs 11 to 14 of the Terms and Conditions of appointment. Available on the JAC website.

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	25 March 2010
Provisional dates for interview	21, 22 and 23 June 2010

Shortlisting

The next step in the process is a sift. A selection panel will consider the information provided in your Application Form and any references received. If you are shortlisted, you will be invited to the next stage. 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 the sift 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 sift and at selection day and will be available to Commissioners at the final selection decision stage.

Please note you should not nominate **Mr Justice Floyd** as a referee as he is unable to provide references as he will be on the selection panel. **Mr Justice Kitchin** may be nominated, if you are known to him.

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.**

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.

Selection days

If you are shortlisted you will be invited to a selection day. The selection day for this exercise will consist of a panel interview. Further details will be sent with any invitation to attend. The overall assessments made by the panel are provided to Commissioners when they make their selection decisions.

Please be aware that letters inviting successful candidates to interview will be sent out in the week commencing 14 June.

Statutory consultation

As required by the Constitutional Reform Act 2005 (CRA), the Commission must consult the Lord Chief Justice and a second person, who has held the office or has other relevant experience, about those candidates it is minded to select. For this exercise the second consultee will be the Chancellor of the High Court.

Character checks

The JAC is required to select only persons of good character. The JAC will carry out checks on all candidates likely to be considered for selection and the results of these checks, together with information declared by candidates in the Application Form, will be assessed.

Selection decisions

The Commission, sitting as a committee, will consider the information gathered about the candidate, which includes the overall assessment report from the selection day panel, to select the candidate to recommend to the Lord Chancellor.

Report to the Lord Chancellor

The Commission reports its final selection to the Lord Chancellor. The Lord Chancellor can accept or reject this recommendation, or ask the Commission to reconsider it. The Lord Chancellor may not select an alternative candidate.

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 20 working days.

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.

Further information

For further information about the selection process and the requirements of the Constitutional Reform Act please consult our website www.judicialappointments.gov.uk

CONTACTS AND FURTHER INFORMATION

Obtaining an application form

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

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.

Submitting your application

Once completed your Application Form should be submitted via our secure online process by going to www.judicialappointments.gov.uk and selecting 'Submit your Application'.

Acknowledgement of your application

When you submit your application by our secure online application process you will receive an acknowledgement on your computer screen. Depending on your internet service provider or computer equipment this could take anything between a few seconds to several minutes. We recommend that you allow up to 5 minutes. You may also request an auto generated e-mail confirming successful receipt, by entering your e-mail address on the Application Form Submission page of the online application.

If you choose to submit your application by post you should receive an acknowledgement of your application within five working days of receipt.

In either case, if you do not receive an acknowledgement within the specified time periods stated above, it is **essential** that you contact the JAAS team by telephone or e-mail without delay.

You must retain a copy of the acknowledgement of your application.

Contact details

1. JAAS

Reference: 00470 (Please use this reference on all communications)

Judicial Appointments Commission
3rd 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:

Angela Seesurrun	020 3334 0386	Selection Exercise Manager
Dianne Parchment	020 3334 0508	Assistant Selection Exercise Manager

E-mail: angela.seesurrun@jac.gsi.gov.uk

Fax: 020 3334 0134

3. Director, Courts Appointments

Jane Andrews	020 3334 0508
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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 sit on a Tribunal, The Chamber President/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 District Judge or Deputy District Judge, the local Designated Civil Judge.

If you are a District Judge of the Principal Registry of the Family Division or Deputy District Judge (PRFD), the Senior District Judge (PRFD).

If you are a District Judge (Magistrates' Courts) or Deputy District Judge (Magistrates' Courts), the Senior District Judge (Magistrates' Courts).

If you are a Sheriff Principal, the Lord Justice Clerk (Scotland only)

If you are a Sheriff, the Sheriff Principal (Scotland only)

Professional referee

If you are a solicitor, Patent or Trademark attorney, your managing partner or relevant equity partner.

If you are a barrister, your Head of Chambers or, if in Northern Ireland, your senior member of the Bar Library.

If you are an advocate, the Dean of the Faculty of Advocates (Scotland only).

If you are employed, your line manager or equivalent.

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

Sir Geoffrey Inkin OBE

Her Honour Judge Frances Kirkham

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