

FEE-PAID CHAIRMAN OF THE COPYRIGHT TRIBUNAL

TERMS AND CONDITIONS OF SERVICE AND TERMS OF APPOINTMENT

INTRODUCTION

1. Section 145 of the Copyright, Designs and Patents Act 1988, as amended, provides for the appointment of 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 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.

LOCATIONS

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

DURATION OF APPOINTMENT

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

RENEWAL OF APPOINTMENT

5. 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 three 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
 - persistent failure to comply with sitting requirements (without good reason);
 - failure to comply with training requirements;
 - sustained failure to observe the standards reasonably expected from a holder of such office;
 - c. 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.
6. All decisions not to renew are taken by the Lord Chancellor with the concurrence of the relevant Chief Justice and Scottish Ministers. Such decisions are taken following an

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

7. The Chairman of the Copyright Tribunal may choose to end his/her appointment by resignation or by declining to accept renewal on completion of a term.

UPPER AGE LIMIT

8. The Lord Chief Justice will not normally extend the appointment of the fee-paid Chairman beyond the age of 70.

ARRANGEMENTS FOR TRAINING & SITTINGS

9. During the course of their appointment office holders are required to undertake such training as may be arranged and required.
10. 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.

CONFLICT OF INTEREST

11. 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 legal practitioner 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.
12. As a general rule, it is undesirable for judicial office holders who are legal practitioners 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.
13. 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.
14. 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

15. 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.
16. 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.
17. 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.
18. 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.
19. 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

20. Under S.146 of the Copyright Designs and Patents Act 1988, the Lord Chancellor may remove the 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 his creditors or in Scotland his estate has been sequestrated or he has executed a trust deed for his 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, he is otherwise unable or unfit to perform the duties of the office.
21. All decisions to remove are taken by the Lord Chancellor with the concurrence of the relevant Chief Justice, and Scottish Ministers. Such decisions are taken in accordance with the procedures contained in the Regulations referred to at paragraph 19 above.

DISQUALIFICATION

22. 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

23. The fees and allowances are determined by the Secretary of State for Department for Business, Innovation and Skills. The appointment is non-salaried and non-pensionable. The Chairman will receive a fee for each day sat. The fees are revised from time to time.
24. 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.
25. 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

26. Fee-paid members of the Copyright Tribunal 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 Department for Business,

Innovation and Skills payroll system and the net fee paid to the office-holder. Fees are not subject to VAT.

27. 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 at www.hmrc.gov.uk. The Ministry of Justice has, however, been advised by HM Revenue & Customs that it is unlikely that fee paid appointments to the Copyright Tribunal 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 Department for Business, Innovation and Skills is able to process the payments through its payroll system.
28. In the event that the practice is nevertheless adopted, in exceptional cases, the Inspector will issue a ‘No Tax’ code to the Department for Business, Innovation and Skills 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 29) since the adoption of this practice does not affect the liability to pay the contributions.
29. 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.
30. 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 and mention the fact that they are office holders, and not employees of the Ministry of Justice or the Department for Business, Innovation and Skills.

TRAVELLING, ETC EXPENSES

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 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

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.qsi.gov.uk. The out of hours pager number is 07659 550652.

ADVICE

33. 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 Copyright Tribunal, 21 Bloomsbury Street, London WC1B 3HF, marked for the attention of Secretary Copyright Tribunal"

Ministry of Justice
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