

TERMS AND CONDITIONS OF SERVICE AND TERMS OF APPOINTMENT

FEE-PAID FIRST TIER JUDGE

INTRODUCTION

1. The following is a basic summary of the terms and conditions of service. A judge of the First Tier Tribunal is to hold and vacate his/her office in accordance with the terms of his/her appointment.

LOCATIONS

2. The geographical jurisdiction of the Tribunal includes England, Wales, Scotland and Northern Ireland and will be organised on a regional basis. A judicial office holder will be assigned to a region and would normally not be expected to travel to hearings outside of that region, though there may be an occasional request to do so.

FREEMASONRY

3. 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

4. An appointment as a fee-paid judge 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 seven grounds for non-renewal:

- (a) inability;
 - (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;
 - (g) part of a structural change to enable recruitment of new fee-paid judges.
6. All decisions not to renew on grounds (a) – (e) 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 of England and Wales. Where a tribunal judge sits wholly or

mainly in Scotland, this power may only be exercised with the concurrence of the Lord President of the Court of Session. Where a Tribunal judge sits wholly or mainly in Northern Ireland, this power may only be exercised with the concurrence of the Lord Chief Justice of Northern Ireland.

7. All decisions not to renew on grounds (f) or (g) will be on a “first in, first out” principle, subject to the requirements of the First Tier Tribunals. 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 Senior President of Tribunals and with the concurrence of the Lord Chief Justice/Lord President/Lord Chief Justice of Northern Ireland.
8. Fee-paid judges may choose to end their appointment by resignation or by declining to accept renewal on completion of a term.

UPPER AGE LIMIT

9. The Lord Chief Justice will not normally extend the appointment of a fee-paid judge beyond the age of 70.

TRAINING

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

SITTINGS REQUIREMENTS

11. A fee-paid judge 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 Tribunal and on the commitments of the office holder. There is no guarantee of a minimum number of sitting days, but a judicial office holder would be expected to be offered a minimum of 15 sittings, which are likely to comprise 30 half-day sessions annually.

APPRAISALS OR MENTORING

12. It is essential that all judicial office holders are given the support that they need to ensure that the high quality service, which the Tribunal Service delivers, is maintained. This support is given to all judicial office holders through mentoring, advice and guidance from salaried tax judiciary, under the overall management of the Chamber President.

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 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.
14. As a general rule, it is undesirable for judicial office holders who are solicitors 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.

15. 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 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

16. The public both deserves and expects the highest standards of conduct from those who hold judicial office. An office holder should notify the Lord Chief Justice/Lord President/Lord Chief Justice of Northern Ireland and the Senior President 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.
17. 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.

REMOVAL FROM OFFICE

18. The Lord Chancellor may if he thinks fit terminate the appointment of a judicial office holder on specified grounds. There are five grounds for removal from appointment:
 - (a) inability;
 - (b) misbehaviour; including
 - (c) failure to comply with training requirements;
 - (d) persistent failure to comply with sitting requirements (without good reason);
 - (e) sustained failure to observe the standards reasonably expected from a holder of such office.
19. All decisions to remove are taken by the Lord Chancellor with the concurrence of the Lord Chief Justice/Lord President/Lord Chief Justice of Northern Ireland. Such decisions are taken in accordance with the procedures contained in Regulations made under the Constitutional Reform Act 2005.

DISQUALIFICATION

20. Fee-paid judicial office holders are precluded by statute from serving concurrently as a Member of Parliament, etc. A fee-paid judge is expected to submit his or her resignation to the Lord Chancellor in the event of nomination or election 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, INCOME TAX AND NI CONTRIBUTIONS

21. The post is non-salaried and non-pensionable. A judicial office holder will receive a fee for each day sat. Fee and salary levels for the First Tier Tribunal are currently being considered by the Senior Salaries Review Body, but the daily fee for this post is likely to be not less than £400 per day.
22. Fee-paid judges 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 Justice's payroll system and the net fee paid to the office holder. Fees are not subject to VAT.

TRAVELLING EXPENSES, ETC

23. 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 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.

MATERNITY, PATERNITY AND ADOPTION LEAVE AND STATUTORY SICK PAY

24. 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.

ADVICE

25. Judicial office holders are welcome to consult the Ministry of Justice or the Tribunal Judicial Office (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 Tax Appeals Modernisation Project, acting on behalf of the Chamber President. Contact details for members of this the team are available at <http://www.financeandtaxtribunals.gov.uk/taxAppealsModernisation.htm>