

TERMS AND CONDITIONS OF SERVICE AND TERMS OF APPOINTMENT 2002

PART TIME ROAD USER CHARGING ADJUDICATOR

INTRODUCTION

1. Road User Charging (Enforcement and Adjudication)(London) Regulations 2001 (regulation 3) provides for the appointment of road charging adjudicators by the Lord Chancellor
2. This memorandum contains information about the terms and conditions of appointment, which should be understood and agreed by all those accepting this appointment. These terms and conditions are correct as at the date given below, but may in some circumstances be subject to change.

NATURE OF THE POST

3. The purpose of a Road User Charging adjudicator is to determine appeals against the refusal of representations against a “penalty charge notice” served on the registered keeper or the person who is liable of the vehicle in accordance with *The Road User Charging (Charges and Penalty Charges) Regulations 2001, No. 2285, 22 June 2001*.

DURATION OF APPOINTMENT

4. An appointment as a part time Road User Charging Adjudicator is for a renewable period of five years. (when send- say previously 5 years, will this remain or change to 4 years)

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.
6. There are four grounds for non-renewal:
 - a) inability;
 - b) misbehaviour; 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) part of a reduction in numbers because of changes in operational requirements;
 - d) part of a structural change to enable recruitment of new fee-paid tribunal office-holders.
7. All decisions not to renew on grounds (a) – (b) are taken by the Lord Chancellor with the concurrence of the Lord Chief Justice. Such decisions are taken following an investigation made at the request of the Lord Chancellor, conducted by a Judge nominated by the Lord Chief Justice, who will report to the Lord Chancellor and the Lord Chief Justice.
8. All decisions not to renew on grounds (c) or (d) will be on a first in first out principle an, the decision to use such grounds and the extent to which they will be used will be taken by the

Lord Chancellor in consultation with a person nominated for and on behalf of the Authority, with the concurrence of the Lord Chief Justice.

9. Part time Road User Charging Adjudicators may choose to end their appointment by resignation or by declining to accept renewal on completion of a term.

UPPER AGE LIMIT

10. The Lord Chancellor will generally not extend the appointment of a part time member beyond the age of 70.

ARRANGEMENTS FOR TRAINING AND SITTINGS

11. Newly appointed part time office holders are not eligible to sit until they have attended and satisfactorily completed the initial induction training. During the training of their appointment office holders are required to undertake such further ongoing training as may be arranged and required.
12. A part time Road User Charging Adjudicator 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. Adjudicators can offer sitting for sessions ranging between three and seven hours. Sitting and periods of sittings will be those agreed with a person nominated for and on behalf of the Authority. Adjudicators will be entitled to the offer of a minimum 3 hours sitting time per week. This figure may be subject to adjustment from time to time, in the light of operational circumstances. Any changes will be announced. The entitlement does not apply to weeks in which the Hearing Centre is not open the usual hours because of Public or other holidays or for other reasons. They may be invited to sit for more than that number of hours, but will not normally be able to sit for more than 50 days per year. The Lord Chancellor's policy is that holders of part time judicial office shall not sit for more than a total of 50 days in any one year, or 70 days in the case of a person who is retired or otherwise not in full time practice or employment. These limits apply to all part time judicial offices held, and not individual appointments. Subject to this limitation, there is no objection in principle to a person holding more than one office. In practical terms, no more than two separate appointments are normally held at any one time.

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 or to appear before a tribunal, at a particular hearing centre if he 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 solicitor to sit at a tribunal or hearing centre where they 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 part time judicial office holder who is a solicitor does sit at such a hearing centre or a tribunal, then the Lord Chancellor regards it as the judicial office holder's personal responsibility (and not that of the staff of the tribunal or the hearing centre) to ensure, as far as possible, that he avoids any potential conflict of interest which might require him to stand down from a particular case.

15. Part time judicial office holders 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. They 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].
16. A part time judicial office holder should not sit on a case if he has personal, professional or pecuniary interest in that case; or if any business or practice of which he is a member in any capacity has such an interest.
17. 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*. Part time judicial office holders should also be aware of the risk of perceived lack of impartiality arising from published articles or public pronouncements, etc. (*Timmins v Gormley* [(2000) 2 WLR 870]). Part time Adjudicators should exercise caution in any reference to their appointment on, for example, letterheads or in chambers advertising literature. Part time Adjudicators hold office only when he or she is serving judicially and should not use their office as a means of pursuing personal, professional or commercial advantage.

JUDICIAL CONDUCT

18. The Lord Chancellor believed that the public both deserves and expects the highest standards of conduct from those who hold judicial office. Without prejudice to the paragraphs below, a part time legal member should notify the Lord Chancellor at the earliest opportunity if he is aware on any matters relating to conduct which may affect his position or may reflect on the standing and reputation of the judiciary at large.
19. A part time Road User Charging Adjudicator should also notify the Lord Chancellor if he gets into serious financial difficulties, particularly if legal proceedings appear likely to be, or actually have been, initiated. He should also inform the Lord Chancellor of any complaint made against him by his professional body, whether it relates to his professional or judicial capacity. An office holder must notify the Lord Chancellor if he is involved, or likely to get involved in any court proceedings.
20. If a part time legal member is charged with, or cautioned for any criminal offence, other than a parking or speeding offence without aggravating circumstances, whether before or after he has been authorised to sit as a part time legal member, he should report the matter at once to the Lord Chancellor 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 incompatible with continuing to serve. However, if a part time Road User Charging Adjudicator were convicted of a grave offence, for instance one involving violence to persons, dishonesty or moral turpitude, the Lord Chancellor would regard himself as having cause to consider the exercise of his powers to remove the individual from office on the grounds of misbehaviour; and the Lord Chancellor regards 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.
21. The Lord Chancellor believes that the public must be entitled to expect all judicial office holders to maintain at all times proper standards of courtesy and consideration. He does 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 the Lord Chancellor's view capable as being regarded as misbehaviour.

22. The Lord Chancellor will, in the event of any such report being made, have full regard to any observations which the part time legal member may wish to make on the matter and will not consider the exercise of the powers vested in him in respect of judicial behaviour without serious cause and the most careful deliberation.

REMOVAL FROM OFFICE

23. The Lord Chancellor may if he thinks fit terminate the appointment of the part time Road User Charging Adjudicator on specified grounds. There are two grounds for removal from appointment:

(1) inability

(2) misbehaviour; including

- failure to comply with training requirements;
- persistent failure to comply with sitting requirements (without good reason); and
- sustained failure to observe the standards reasonably expected from a holder of such office.

24. All decisions to remove are taken by the Lord Chancellor. Such decisions are taken following an investigation made at the request of the Lord Chancellor, conducted by a judge nominated by the Lord Chief Justice, who will report to the Lord Chancellor and the Lord Chief Justice.

DISQUALIFICATION

25. Part time legal members are precluded from serving currently as a Member of Parliament, etc. A part time legal member is expected to submit his 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 or to the European Parliament. The Lord Chancellor should be consulted if doubts arise about any particular circumstances

FEES

26. It is intended that fees for part time Road User Charging Adjudicators will be paid in a like manner as those paid to London Parking Adjudicators. From 1 April 2001 the sitting fee for London Parking Adjudicators is £39.00 per hour. Continuous training sessions are paid at half rate. The fees will be paid for adjudication sitting, but not for time spent travelling to and from a place or sitting or a place of training. Expenses will not be paid. A record of Payable hours must be kept and sent to a person nominated for and on behalf of the Authority monthly for approval. The Chamberlain of the City of London through the Bank Automated Clearing Systems will make payment on a monthly basis. This rate may be revised from time to time. The appointment is non-salaried and non-pensionable. Fees are paid net of Income Tax (at the standard rate) and National Insurance. Statutory documents are produced by the Corporation of London as the lead authority.

INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS

27. Part time Road User Charging Adjudicators are regarded as holders of an office for tax and National Insurance purposes. Fees payable will, as a result, be chargeable to tax under Parts 2 to 7 of the Income Tax (Earnings and Pensions) Act 2003 and subject to Class 1 National Insurance contributions. These liabilities will be deducted via the Department for Transport, Local Government and Regions payroll system and the net fee paid to the judicial office holder. Fees are not subject to VAT.
28. Judicial Office holders may wish to be aware that in certain circumstances, the HM Revenue & Customs (HMRC) may be 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 the trading income rules. There are various HMRC conditions that must be met and office holders who want further details on this practice should contact their HMRC Office or see the website at www.hmrc.gov.uk. The Ministry of Justice has, however, been advised by HMRC that it is unlikely that fee-paid appointments to tribunals' judicial offices will qualify for this administrative practice as the HMRC condition "there would be practical difficulties if the fees were treated as employment income" will not be met, since the Ministry of Justice is able to process the payments through its payroll system.
29. In the event that the practice is nevertheless adopted, in exceptional cases, HMRC will issue a 'No Tax' code to the Transport, Local Government and the Regions and no tax will be deducted from the fee. The fees should be then included in the judicial office holder's Self-Assessment return or practice/partnership income. Class 1 National Insurance contributions will, however, continue to be deducted from the fee subject to paragraph 20 above since the adoption of this practice does not affect the liability to pay the contributions.
30. Although it is the responsibility of a part time judicial office holder to arrange matters with the HMRC National Contributions Office, the Lord Chancellors Department 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 a refund of excess contribution made in a previous year. Further details may be obtained by contacting the Deferment Group at the HMRC National Insurance Contributions Office, Longbenton.
31. It would be helpful, and avoid confusion, if in any correspondence with HMRC regarding fees and allowances attributable to any fee paid part time office, and with HMRC National Insurance contributions, judicial office holders would give as the address for the fee paying authority the appropriate tribunal and mention the fact that they are judicial office holders, and not employees of the Lord Chancellor's Department or the Department for Transport, Local Government and the Regions.

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

ADVICE

33. Part time Road User Charging Adjudicators are welcome to consult Judicial Office on any matter relating to judicial appointments at any time.

March 2002