

## Part 5 – Matters arising after appointment

### Guiding principle

- 5.1. Responsibility for the deployment of judicial office holders rests with the Lord Chief Justice as Head of the Judiciary. Together, the Lord Chancellor and the Lord Chief Justice rely on advisory committees to ensure that these Directions are implemented.
- 5.2. Where matters handled at advisory committee level need immediate attention, they should be dealt with by the chairman (or a committee member nominated to act on the chairman's behalf). The chairman (or nominated deputy) is able to act on behalf of the committee. The secretary to the committee should therefore bring the matter to the chairman's immediate attention.
- 5.3. The administrative functions of the advisory committee will be carried out by the secretary (or an official nominated to act on the secretary's behalf).

### Attendance

- 5.4. This section sets out the Lord Chancellor's directions on how often magistrates should sit and how attendances should be counted. This falls within the Lord Chancellor's role as government minister responsible for the courts system, and his responsibility for working together with the Lord Chief Justice to ensure the judiciary reflects the diversity of society as a whole.

### Minimum sittings

- 5.5. The Lord Chancellor accepts that magistrates who have busy lives at home or at work can often undertake no more than the minimum sitting requirement of 13 days / 26 half-days a year. This can be a major commitment on their part and can contribute to a diverse make-up of the bench.
- 5.6. Where a magistrate has not achieved the minimum sittings level, the advisory committee should contact the bench chairman, who will have been monitoring sittings levels throughout the year, to establish the reasons.
- 5.7. Where the advisory committee considers that the matter can remain in the hands of the bench chairman to resolve on a pastoral basis, this should be recorded and a date set for subsequent review. An exception to this is where the magistrate has recently been appointed.
- 5.8. It is, however, important to be clear that the overall number of magistrates' sitting days available for a local area will be determined by workload at the court, and available resources, not the need to maintain magistrates' sittings.

- 5.9. Where a magistrate is repeatedly unable to achieve the minimum attendance figure of 13 sitting days each year without good reason they should resign from the Active List in accordance with the declaration and undertaking they signed on appointment.
- 5.10. Where the alternative would be for the Lord Chancellor and Lord Chief Justice to remove the magistrate, the advisory committee should appoint a conduct investigation panel to consider the matter in accordance with *The Lord Chief Justice's Directions to Bench Chairmen Dealing with Pastoral Matters* and make a recommendation.
- 5.11. If a magistrate is unable to meet the minimum requirement because of insufficient opportunity to sit, that alone does not represent a reason to remove the magistrate.

#### **Maximum sittings**

- 5.12. Magistrates should not sit for more than **35 sitting days** each year unless they sit in other jurisdictions (such as Youth, Family and Fine Enforcement) in addition to the Adult Court. If they do sit in other jurisdictions, the Lord Chancellor regards **50 sitting days** each year as the appropriate maximum.
- 5.13. Where magistrates have sat for an excessive number of times, the advisory committee should establish the reasons and record the action taken. As excessive sitting is generally not the fault of an individual magistrate, the advisory committee should also review what steps the court administration might take to ensure that the Lord Chancellor's Directions on maximum sittings are observed.
- 5.14. On occasions, it may be helpful for the bench chairman, on a pastoral basis, to draw the rules on maximum sittings to the attention of the magistrate concerned. However, it would not be appropriate for them to write to individual magistrates about high levels of sittings which result from court officers asking them to sit.

#### **Full/half-day sittings**

- 5.15. To help ensure the speedy and efficient conduct of judicial business, sittings in the magistrates' court will almost always be planned on a full-day basis and the majority of magistrates are able and willing to meet those requirements. However, court rotas must be flexible enough to accommodate magistrates whose other commitments prevent them from sitting for full-days (albeit that a mix of sittings, including some full-day sittings, may sometimes be necessary for them to maintain competence in accordance with the National Training Programme for Magistrates (NTPfM)).

### Regular attendances

- 5.16. Ideally it would be preferable for magistrates to sit at regular intervals throughout the year, so that:
- they gain experience of, and remain familiar with, their duties;
  - there is a reasonably fair distribution of sittings across the bench; and
  - the work of the court can be planned in the knowledge that a sufficient number of magistrates will be available to be called upon at any time.
- 5.17. However, in order to achieve and retain a more diverse bench, the Lord Chancellor and the Lord Chief Justice encourage advisory committees to be as flexible as possible towards magistrates whose other commitments make it difficult for them to sit at regular intervals throughout the year, provided this will not prevent them from remaining competent on the bench. For example, teachers may prefer to sit in the holidays, whereas parents of young children may prefer to sit during term-time.

### Average sittings

- 5.18. If the right number of magistrates are in place in the area, the average annual attendance figure for each bench (including sittings in the Crown Court) should be between **17 and 23 sitting days**. A higher level than this imposes an unnecessary burden on some magistrates, may cause difficulties for employers and fellow employees, and could undermine the diversity of the bench.
- 5.19. It is *not* for magistrates to try to achieve the average for their bench. An average implies some sitting fewer times and some more. The overall level of sittings will be determined by workload/caseload at the magistrates' court.

### The method of counting attendances

- 5.20. These directions are intended to ensure consistency in the way advisory committees calculate attendance figures and determine whether individual magistrates are meeting their minimum sittings levels, or are sitting in excess of the limits.
- 5.21. Attendances must be calculated in half-days:
- where a magistrate is rostered to sit for the whole day, they will be credited with two sittings however long the court sits in the afternoon;
  - where a magistrate is rostered to sit only in the morning, but the court does not finish and the bench is required to return after lunch, the afternoon will count as a separate sitting irrespective of how long the court sits in the afternoon;
  - where there is no break for lunch, a sitting which lasts for longer than four hours should be counted as two sittings; and
  - where a magistrate is rostered to sit for the whole day, but only sits in the morning, they will only be credited with the morning sitting.

- 5.22. Where a magistrate attends two different courts, for example an adult and a youth court, during the course of the same morning or the same afternoon, this should normally be counted as one attendance (in the court where the magistrate sat the longest).
- 5.23. Sittings at any of the following are counted as attendances:
- adult court (both ordinary and special sittings);
  - family proceedings court;
  - youth court;
  - licensing appeal panels and betting panels, if these meet on separate occasions, but not if they sit immediately before or after the sitting of a court; and
  - sittings in the Crown Court.
- 5.24. Sittings at another bench should be counted in ascertaining the total number of sittings by an individual magistrate.
- 5.25. Where a magistrate has undertaken sittings at another bench, those sittings should only be used in calculating the average attendance figure for the bench at which they were undertaken, and not for the bench to which the magistrate is permanently assigned.

### Family and youth panels

- 5.26. Magistrates who sit in both the adult court and in either the youth and family proceedings courts should sit a minimum of **15 half-days** in each jurisdiction, within an overall minimum of **30 half-days** annually (although these will normally be done as full-day sittings), provided there is sufficient work. If a magistrate cannot achieve 15 half-day sittings in the youth or family courts, they should look to make their sittings up to 30 half-days by sitting for more than 15 half-days in the adult court provided this meets the business needs of the adult court.
- 5.27. Magistrates who sit in all three jurisdictions will be expected to sit an overall minimum across all three jurisdictions of **45 half-days** annually. When applying for authorisation to sit in the youth and family proceedings courts, magistrates must give an undertaking that they can comply with the minimum sitting requirements.
- 5.28. Family magistrates who are able to do so, and where the wider needs of the business allow, are encouraged to sit above the **15 half-day** sittings level provided this is not at the expense of their availability to sit in the adult court. In these circumstances, the overall minimum in the adult court will remain at **15 half-days**.
- 5.29. Family chairmen who are able to do so, and where the wider needs of the business allow, are encouraged to sit a minimum of **24 half-days** a year (although these will normally be done as full-day sittings) in the family proceedings court (with two thirds of sittings being as the chairman).

### **Sitting exclusively in the family proceedings court**

5.30. Magistrates who are authorised to hear cases in the Family court may opt to sit exclusively in the Family court provided the following three provisions are met:

- the family proceedings court is able to provide sufficient work to enable the magistrate to achieve the minimum sittings requirement (which would be **13 sitting-days**), including back-up work where cases settle;
- this will not deprive other magistrates on the family panel of the chance to meet at least their minimum sittings requirement in family work; and
- it would not impact adversely on the ability of the justices' clerk to manage the adult court work.

Requests to sit exclusively in the family court should be approved by the Bench Chairman in consultation with the Family Panel Chairman and FTAAAC.

Magistrates who sit in both the adult court and the Family court may opt to sit exclusively in the Adult Court provided the following three provisions are met:

- the Adult court is able to provide sufficient work to enable the magistrate to achieve the minimum sittings requirement (which would be 13 sitting-days);
- this will not deprive other magistrates in the Adult court of the chance to meet at least their minimum sittings requirement; and
- it would not impact adversely on the ability of the justices' clerk to manage the Family court work.

Requests to return to sit exclusively in the Criminal Court should be approved by the Bench Chairmen in consultation with the Family Panel Chairmen and the JTAAAC

5.31. Magistrates who have discharged their sitting obligations exclusively in the family proceedings court may subsequently return to sit in the adult court. They will be required to undertake such refresher training (including appraisal) as the BTDC require.

5.32. The decision as to whether magistrates should be allowed to sit exclusively in the family proceedings court should be made by the bench chairman, in consultation with the family panel chairman and the BTDC and the FTDC (if there is one). Any changes to the parameters in these Directions for seeking authorisation to sit on the family panel, that are brought about by provisions in the Crime and Courts Bill, once enacted, will be communicated to advisory committees.

### **Sittings in the Crown Court**

5.33. Magistrates may sit in the Crown Court as provided by statute and subject to the guidance below.

- 5.34. To sit in the Crown Court, magistrates must have the support of their justices' clerk and bench chairman. They should have sat for a minimum of two years and have been appraised as competent in the adult court.
- 5.35. Any magistrate sitting in the Crown Court on a youth appeal must have been appraised as competent in the youth court within the past three years.
- 5.36. Any additional local eligibility requirements or protocol in relation to sitting in the Crown Court should be considered by the magistrates area training committee and approved by the bench. This is to ensure local consistency and that the process is open and transparent.
- 5.37. The BTDC is responsible for maintaining the list of magistrates eligible to sit in the Crown Court.

### **Leave of absence**

- 5.38. This section sets out the procedures for granting leave of absence to magistrates and describes the limits of authority at each level.

#### **Up to three months**

- 5.39. Bench chairmen have authority to approve a single request for leave of absence for up to three months in any 12 month period. Where a magistrate seeks a second leave of absence for up to three months in any 12 month period, this should be referred to the advisory committee for approval.
- 5.40. The bench chairman must ensure that they notify, in writing, the advisory committee of all such approved absences and give reasons for approval.
- 5.41. Advisory committees are not required to notify the Magistrates HR Team.

#### **Three to 12 months**

- 5.42. The advisory committee may approve applications for extensions to the original three month absence for up to 12 months, or an initial request for leave of absence of between three and 12 months.
- 5.43. The advisory committee must notify the Magistrates HR Team of all such leaves of absence they have granted.

#### **Over 12 months**

- 5.44. The advisory committee must refer applications for leave of absence of over 12 months, with their recommendation, to the Magistrates HR Team.
- 5.45. Where the application is approved, the advisory committee should notify the bench chairman.
- 5.46. It is unlikely that leave of absence of more than 18 months will be granted. The expectation is that the magistrate concerned should either request a transfer from the Active List to the Supplemental List or resign from judicial

office, and then seek either a return to the Active List or re-appointment to the magistracy respectively if circumstances allow.

#### **Absences abroad**

- 5.47. Leave of absence may be granted for a person who will be temporarily abroad, for example, in connection with their employment. The procedure to be followed is the same as that described above, depending on the period requested.
- 5.48. It is unlikely that a period of over 18 months will be granted for this purpose. However, it may be appropriate for the advisory committee to consider whether the magistrate's name should be entered in the Supplemental List in accordance with the guidance below.

#### **Absence due to illness**

- 5.49. Leave of absence is not required in the case of magistrates who are ill. However, the advisory committee should monitor such absences carefully and maintain records. It is important that the circumstances of each absence are carefully considered and that any action taken is appropriate to the individual case.
- 5.50. Where a magistrate has been absent from the bench due to ill-health for three months or more, the bench chairman must bring the matter to the attention of the advisory committee in writing.
- 5.51. The advisory committee is responsible for monitoring absences due to illness that are of longer than three months duration.
- 5.52. Magistrates who have been absent from the bench for 18 months and are unlikely to be able to resume their duties soon, are expected to request a transfer from the Active List to the Supplemental List or resign from judicial office in accordance with the declaration and undertaking they signed on appointment. However, each case will be different and magistrates are encouraged to discuss the matter first with their bench chairman. In some circumstances it may be appropriate for the advisory committee to consider whether the magistrate's name should be entered in the Supplemental List in accordance with the guidance below even if the magistrate concerned has not themselves requested entry in the List.

#### **Medical referral in relation to fitness to perform functions of office**

- 5.53. Where the advisory committee considers an independent medical opinion is required as to a magistrate's current state of health and fitness to perform the duties of office, and whether any adjustments are required in the workplace, the advisory committee secretary should approach the relevant senior caseworker in the Judicial Office HR Casework Team for advice.
- 5.54. All referrals to consultant occupational health physicians will require the written consent of the magistrates concerned and will follow the same principles and procedures as contained in the Lord Chief Justice's Policy on Judicial Health and Welfare (available on the judicial intranet).

**Medical referral in relation to fitness to participate in conduct investigation**

- 5.55. Where the advisory committee considers an independent medical opinion is required as to whether a magistrate is well enough to participate in any conduct investigation, the advisory committee secretary should approach the relevant senior caseworker in the Judicial Office HR Casework Team for advice.
- 5.56. The guidance at **paragraph 5.54** above also applies.

**Leave of absence when expecting or adopting a baby**

- 5.57. Magistrates who are expecting a baby, including adoption of a baby, may take 52 weeks' leave of absence from sitting without seeking formal leave of absence. They should notify their bench chairman and justices' clerk / advisory committee secretary as soon as reasonably practicable of the date when they intend to start taking leave. The bench chairman and justices' clerk / advisory committee secretary should pass this information to the advisory committee to note.
- 5.58. Applications for leave of absence beyond this period should be referred to the advisory committee.

**Absence for longer than 18 months**

- 5.59. Where a magistrate has been absent from the bench for longer than 18 months, whether by virtue of domestic or employment related matters or by reason of ill-health, the advisory committee should initiate action to regularise the magistrate's position.
- 5.60. In the first instance, the advisory committee should ask the bench chairman to meet with the magistrate to discuss whether or not they are likely to return to the bench imminently and, if not, whether they would be willing to resign from office or move from the Active List and apply for their name to be entered in the Supplemental List, in accordance with the declaration and undertaking they signed on appointment.
- 5.61. Where the magistrate is unwilling to resign, or where the bench chairman is unable to make contact with the magistrate, the advisory committee should refer the matter to the Magistrates HR Team. If bench chairmen need advice they should contact the Magistrates HR Team; this will normally be done via the justices' clerk / secretary to the advisory committee.
- 5.62. Where the magistrate is content to move from the Active List they may apply to the Lord Chancellor, via the advisory committee, for their name to be entered in the Supplemental List. The magistrate would be able to apply to return to the Active List whenever their personal circumstances make this appropriate.
- 5.63. Where the magistrate is unwilling to move from the Active List, or where the bench chairman is unable to make contact with the magistrate, the advisory committee should refer the matter to the Magistrates HR Team.



- 5.64. Cases will need to be handled carefully and there may be occasions, for example in the case of long term illness, where action to remove a magistrate from office would be insensitive.
- 5.65. Where a magistrate returns to sitting after a long absence, the chairman of the Bench Training and Development Committee should be notified in accordance with the Judicial Studies Board *Good Practice Guide for Bench Training and Development Committees*.

#### **Absences due to other personal circumstances**

- 5.66. Where a magistrate refrains from sitting or taking part in other magisterial duties by virtue of any circumstances set out in *The Lord Chief Justice's Directions to Bench Chairmen Dealing with Pastoral Matters* (i.e. court proceedings, financial difficulties or the conduct of relatives or friends), the bench chairman should monitor the situation and report the matter to the advisory committee if the absence exceeds, or is likely to exceed, three months.

### **Reassignments (transfers) to other local justice areas**

#### **General provisions**

- 5.67. The Lord Chief Justice has delegated his statutory authority to reassign magistrates to a different local justice area to bench chairmen and the Senior Presiding Judge.
- 5.68. Where parts of this policy require referral to the Senior Presiding Judge or consultation with the Lord Chancellor, the Magistrates HR Team will facilitate that process.

#### **Permanent transfers between local justice areas**

- 5.69. While magistrates have no automatic right to transfer, applications should be granted unless there are sound reasons to refuse them (see section vii in box 3 below).
- 5.70. The transfer process is outlined below.

#### **Application**

- i. Magistrate submits application form (**Appendix 5A**) to their advisory committee secretary and informs current bench chairman of application.
- ii. Secretary acknowledges receipt and processes application (or passes to relevant counterpart if transfer destination is in a different committee area).
- iii. If destination area is fully subscribed, advisory committee secretary forwards application to bench chairman to consider as per paragraph 5.79 below.

<p><b>Reference</b></p> <p>iv. Secretary requests reference from current bench chairman (<b>Appendix 5B</b>).</p> <p>v. Bench chairman consults Bench Training and Development Committee for information to incorporate, including assessment of competence and anything relevant from appraisal reports.</p> <p>vi. Bench chairman sends completed reference to advisory committee secretary and copies to magistrate.</p>
<p><b>Assessment of application</b></p> <p>vii. Secretary checks for circumstances which could trigger refusal of application or referral to the Senior Presiding Judge via Magistrates HR (see paragraph 5.72 below).</p> <p>viii. Secretary forwards application, reference and recommendation from advisory committee to bench chairman for consideration.</p>
<p><b>Consultation</b></p> <p>ix. Bench chairman informs secretary of proposed decision.</p> <p>x. If bench chairman is minded to approve, secretary informs the Magistrates HR Team who will consider and normally approve the proposal on behalf of the Lord Chancellor and respond (see also paragraph 5.68).</p>
<p><b>Formal reassignment</b></p> <p>xi. Bench chairman formally reassigns magistrate and communicates outcome to magistrate.</p>
<p><b>Meeting with magistrate</b></p> <p>xii. Bench chairman arranges introductory meeting with magistrate; Training and Development Committee chairman can also attend to discuss any training needs. (Checklist for discussions at <b>Appendix 5D</b>.)</p>

- 5.71. In the highly unlikely event that Magistrates HR opposes a transfer on behalf of the Lord Chancellor, the chairman of the receiving bench is authorised to make the final decision as to whether or not the transfer should be completed.

**Reasons to refuse, put on hold, or refer a transfer application to the Senior Presiding Judge via Magistrates HR**

- 5.72. Applications by magistrates disqualified from sitting at their desired destination by factors set out at Part 2 of these Directions, such as occupation, should be refused. Where disqualification is not absolute and depends on the specific circumstances, the bench chairman should make

a decision with the concurrence of the advisory committee. If agreement cannot be reached, the matter should be referred to the Magistrates HR Team.

- 5.73. Applications from magistrates who are, or who become, involved in conduct proceedings should be held in abeyance for processing once the proceedings are concluded.
- 5.74. Where, following conduct proceedings, a magistrate has been subject to formal disciplinary action, this does not in itself justify rejecting their application. Bench chairmen who have concerns about approving an application should refer the matter to the Magistrates HR Team. The same applies to concerns arising from a bench chairman's reference.
- 5.75. The decision to accept or refuse a transfer application should be communicated on the form at **Appendix 5C**.

**Right to seek review of a decision to reject a transfer application**

- 5.76. A magistrate whose application has been refused by a bench chairman is entitled to request a review by the Senior Presiding Judge.
- 5.77. Requests for review should be sent to the Magistrates HR Team within **ten working days** of the decision being communicated to the magistrate.

**Procedure where a Local Justice Area is fully subscribed**

- 5.78. A local justice area should be regarded as fully subscribed if:
- average sittings for the Bench are below 20 sitting days<sup>4</sup> per year; and
  - it is envisaged that accepting any transfers within the following 12 months would prevent magistrates from attaining minimum sitting requirements.
- 5.79. Where a local justice area is fully subscribed, the bench chairman, with the agreement of the advisory committee, may place would-be transferees on a waiting-list until there is a need for a magistrate to join the bench.
- 5.80. Both originating and receiving advisory committees must maintain an up-to-date record of magistrates who have been placed on a waiting-list.
- 5.81. When vacancies arise, magistrates should be invited to join the bench according to their place on the waiting-list. However, where a need has arisen for a magistrate with chairmanship, appraisal, or mentoring skills; or who is qualified to sit on the family or youth panel, a magistrate who possesses the required skill(s) can be invited to join the bench ahead of those who do not.
- 5.82. Magistrates who have been on a waiting list for 18 months, with no prospect of a suitable vacancy arising in the foreseeable future, should be

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<sup>4</sup> A "sitting day" equates to two half-day sittings.

encouraged to apply to be entered in the Supplemental List. However, it is important to note that magistrates cannot be compelled to do so.

- 5.83. Magistrates should undertake to complete any necessary training prior to returning to sitting following a period on a waiting-list.

#### **Procedure where there are concerns about the impact of transfers on recruiting local people**

- 5.84. Where an advisory committee is concerned that continuing to accept transfers, or adding would-be transferees to a waiting-list, is liable to significantly hinder the appointment of sufficient numbers of local people or to undermine the balance of the bench, the Senior Presiding Judge can be asked for permission to place a 12 month moratorium on accepting transfer applications. At least one month prior to the expiration of an existing moratorium, the SPJ can be asked for permission to extend the moratorium for up to a further 12 months. The Magistrates HR Team should be contacted for advice on the formulation of requests to introduce, or extend a moratorium.

#### **Reassignment in the interests of the administration of justice**

- 5.85. In very exceptional circumstances the Senior Presiding Judge may consider it appropriate, in the interests of the administration of justice, to reassign a magistrate to another local justice area under Section 10(2)(b) of the Courts Act 2003. This authority rests solely with the Senior Presiding Judge following consultation with the Lord Chancellor and would be exercised only after very careful consideration. Where officials on the Magistrates HR Team are in any doubt they will refer the matter to the Lord Chancellor. Where the Lord Chancellor indicates his opposition to the reassignment, the Senior Presiding Judge must give very careful consideration to the Lord Chancellor's views before reassigning the magistrate. This power is not delegated to bench chairmen.

### **The Supplemental List**

- 5.86. This section describes the Supplemental List for England and Wales<sup>5</sup> and when and how a magistrate's name should be entered in it.

#### **General**

- 5.87. The Courts Act 2003 provides that a Supplemental List for England and Wales must be kept in the office of the Clerk of the Crown in Chancery. The Clerk of the Crown in Chancery is also the Permanent Secretary of the Ministry of Justice.

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<sup>5</sup> Sections 12 to 14 of the Courts Act 2003 as amended by Schedule 4 to the Constitutional Reform Act 2005 refer.

- 5.88. The Supplemental List should be used actively as a means:
- to commend magistrates for good service upon moving from the Active List and automatically upon reaching the statutory retirement age of 70; and
  - to ease the process of return to the Active List in situations where magistrates have been temporarily obliged to transfer from that List.
- 5.89. Magistrates under 70 years of age who are entered in the Supplemental List may be returned to the Active List and resume sitting without needing to be formally re-interviewed.

### **Retirement**

- 5.90. A magistrate who has reached the age of 70 must have their name entered in the Supplemental List, except in the following circumstances:
- a magistrate who is bench chairman on their 70<sup>th</sup> birthday may remain in the Active List until the term for which they are serving has ended (Courts Act 2003, Section 13 (2)). The secretary to the advisory committee should notify the Magistrates HR Team; or
  - a magistrate who is, or is expected to be, exercising functions in proceedings on their 70<sup>th</sup> birthday may remain in the Active List until those proceedings have ended, subject to the agreement of the Lord Chief Justice and Lord Chancellor. The secretary to the advisory committee must notify the Magistrates HR Team when such situations arise (giving as much notice as possible) and a member of the Team will seek a direction from the Lord Chief Justice and the Lord Chancellor.

### **Entry in the Supplemental List upon leaving the Active List**

- 5.91. A magistrate who wishes to move from the Active List to the Supplemental List may apply to have their name entered in the Supplemental List at any time. There is no minimum service threshold before a magistrate can request that their name be entered in the Supplemental List. The Lord Chancellor may grant this application on the recommendation of the advisory committee.
- 5.92. The advisory committee should give consideration to all reasonable requests and have regard to the good service of the individual magistrate. As a general rule, the magistrate should have completed their core training and been appraised as competent in the adult court; they should have met the minimum sittings requirement of 13 sitting-days within the past 12 months (except where good reasons apply); and they should not have been subject to disciplinary action for misconduct within the past five years.
- 5.93. Under this provision, a magistrate may apply to be entered in the Supplemental List in circumstances where a sabbatical from court sittings is necessary and it is likely to extend longer than the leave of absence rules permit. This is to encourage the retention of magistrates in the longer term and would apply to those who need to take an extended break from sitting (for example, because of work commitments, parental responsibilities, or

the need to provide care and support to dependants), but who might intend to resume their service as a magistrate at a later date. This provision would also apply where a magistrate moves to an area where there is no vacancy on the bench.

- 5.94. Applications to enter a name in the Supplemental List should be made in writing to the advisory committee, who may need to consult the bench chairman and the chairman of the BTDC.
- 5.95. Where the advisory committee decides not to make a recommendation to the Lord Chancellor, the secretary should inform the magistrate in writing, giving reasons for the committee's decision. In such circumstances, it would be open to the magistrate concerned to ask the Lord Chancellor to reconsider the matter.
- 5.96. Where the Lord Chancellor decides not to enter a magistrate's name in the Supplemental List, the Lord Chancellor will write to the magistrate setting out his reasons for not doing so.
- 5.97. Magistrates in the Supplemental List who wish to return to the Active List, and for whom there is a vacancy on the bench that they wish to resume sitting at, would need to be interviewed informally by the advisory committee to ensure that no exceptional circumstances apply and to assess training needs. If such an informal meeting takes place, a minute of the meeting should be taken.
- 5.98. A magistrate in the Supplemental List who wishes to return to the Active List does not need to complete a new application form unless there have been substantial changes in their circumstances since they last served as a magistrate. Advisory committees and sub-committees should use their discretion in deciding whether a new application form should be completed.
- 5.99. Magistrates may have their names entered in the Supplemental List even when they are planning to move their permanent residence abroad. However, it is not permissible for magistrates to be entered in the Supplemental List and allowed to make use of the JP suffix if they are moving to a country where there is a similar jurisdiction to that of the magistracy in England and Wales and where the suffix JP is widely used by judicial office holders in that country, carrying with it certain rights and duties.

#### **Powers and duties of magistrates in the Supplemental List**

- 5.100. The Courts Act 2003 does not provide authority for Supplemental List magistrates to perform certain acts (such as the signing of passport photographs), as the majority of such acts do not require statutory authority.

- 5.101. Magistrates in the Supplemental List may use the suffix 'JP' after their name under the same guidance set out for active magistrates (see the *Useful information for Magistrates* booklet<sup>6</sup>).
- 5.102. A magistrate in the Supplemental List may not:
- sit in a magistrates' court to adjudicate; or
  - sign summonses or warrants, including search warrants; or
  - be a member of any committee or any other body as a magistrate; or
  - take part in the election of chairman or deputy chairman of any bench; or
  - attend any formal or business meeting of their former bench; or
  - countersign an application for a shotgun or firearms licence.
- 5.103. Magistrates in the Supplemental List must inform the advisory committee secretary for their existing area if they change address. The secretary must inform the Magistrates HR Team and, if the move is to an area covered by another advisory committee, must notify the advisory committee of the new area that it has a magistrate in the Supplemental List residing in its area. Advisory committees and local benches are encouraged to keep in touch with magistrates in the Supplemental List as appropriate.
- 5.104. Magistrates will be sent a valedictory letter with a note explaining what being in the Supplemental List means.

### **Complaints about Supplemental List magistrates**

- 5.105. If an advisory committee receives a particularised complaint about the conduct or behaviour of a magistrate in the Supplemental List, the complaint, if appropriate, should be investigated by the advisory committee in line with the process contained in the Complaints (Magistrates) Rules 2008.

### **Resignation, retirement and death**

- 5.106. This section describes the procedures advisory committees should follow when a magistrate resigns from office or retires, and when a magistrate in either the Active List or the Supplemental List dies.

#### **Resignations**

- 5.107. A magistrate may, at any time, resign absolutely from judicial office or request a move from the Active List and for their name to be entered in the Supplemental List. Advisory committees may recommend that any magistrate who leaves the Active List should have their name entered in the Supplemental List for England and Wales irrespective of their length of

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<sup>6</sup> [www.benchmark.sut1.co.uk/join/](http://www.benchmark.sut1.co.uk/join/) (initial registration required).

service. The magistrate will receive an appropriate letter from the Magistrates HR Team.

### **Retirement**

- 5.108. Three months before a magistrate reaches their 70<sup>th</sup> birthday, the Magistrates HR Team will write to the advisory committee secretary to confirm the date of retirement from the Active List.
- 5.109. The secretary should notify the Magistrates HR Team as soon as possible of any exceptional circumstances and of any personal matters which might affect the wording of the valedictory letter.
- 5.110. Officials will prepare a valedictory letter to be sent from the Senior Presiding Judge, which will be despatched on or about the date of retirement. A separate letter will be sent to the magistrate by the Lord Chancellor thanking them for their service.

### **Death**

- 5.111. When reporting the death of a magistrate in the Active List, the secretary to the advisory committee must also indicate whether it is appropriate to send a letter of condolence to the next of kin and if so provide the name and address of the person to whom that letter should be sent.
- 5.112. Advisory committee secretaries must also report to the Magistrates HR Team the death of a magistrate who was in the Supplemental List for England and Wales.
- 5.113. It is not usual to write a letter of condolence to the next of kin of a magistrate in the Supplemental List. If, however, an advisory committee feels that a letter of condolence would be appropriate because of particular circumstances (if, for example, the magistrate was only recently entered in the Supplemental List), then the secretary should inform the Magistrates HR Team accordingly.

### **Re-appointments**

- 5.114. Former magistrates have no automatic right to be re-appointed. However, the Lord Chancellor expects that, wherever circumstances allow, consideration will be given to re-appointing magistrates who have resigned from office and now wish to resume sitting.
- 5.115. There is no requirement that former magistrates who apply for re-appointment should have lived in the area to which they are applying for 12 months.
- 5.116. Those seeking to return to the Active List from the Supplemental List should not be made to await consideration at the next appointment round unless there is serious doubt as to whether they will be needed.
- 5.117. All recommendations for re-appointment / return to the Active List from the Supplemental List should be submitted to the Magistrates HR Team for



approval by the Lord Chancellor and the Lord Chief Justice. Advisory committees can submit recommendations for re-appointment to the Magistrates HR Team at any time.

- 5.118. The following paragraphs set out the process for dealing with applications for re-appointment or return to the Active List from the Supplemental List.

#### **Magistrates in the Supplemental List**

- 5.119. The general expectation is that, provided there have been no substantial changes in their circumstances and this is confirmed in writing, magistrates in this position may be returned to the Active List and resume sitting without needing to complete an application form, or attend formal interviews.
- 5.120. While it is not necessary for the magistrate to provide external referees, the advisory committee secretary should send the standard reference form (**Appendix 3B**) to the magistrate's previous advisory committee to obtain a reference from the chairman of the magistrate's former bench.
- 5.121. The advisory committee should meet with the magistrate prior to recommending their return to the Active List to ensure that there have been no substantial changes in circumstances and that there is no cause for concern over their return to the Active List. The meeting should be comprised of one magistrate member and one non-magistrate member of the advisory committee (one of whom may be the advisory committee chairman) and the advisory committee secretary, or their deputy, should be present to deal with any queries.
- 5.122. If the meeting reveals any particular concerns or any substantial change in circumstances, the advisory committee may decide to treat the magistrate as a new applicant. In such cases, it would be open to the magistrate concerned to ask the Lord Chancellor to reconsider the matter.

#### **Former magistrates who have resigned absolutely from office**

- 5.123. The general expectation is that, provided they resigned less than two years ago, former magistrates in this position will not need to provide referees or go through the formal interview process. However, they will need to complete an application form, so that an up-to-date written record is available.
- 5.124. While it is not necessary for the former magistrate to provide external referees, the advisory committee secretary should send the standard reference form (**Appendix 3B**) to the former magistrate's previous advisory committee to obtain a reference from the chairman of the magistrate's former bench.
- 5.125. The advisory committee should meet with the former magistrate prior to recommending re-appointment to ensure that there have been no substantial changes in circumstances and that there is no cause for concern over their re-appointment. The meeting should be comprised of one magistrate member and one non-magistrate member of the advisory committee (one of whom may be the advisory committee chairman). The

advisory committee secretary, or their deputy, should be available to deal with any queries.

- 5.126. If the former magistrate's application form, the completed reference form, or the informal meeting reveals any particular concerns or any substantial change in circumstances, the advisory committee may exercise discretion to require external referees and carry out formal first and second stage interviews before making a recommendation for re-appointment.
- 5.127. Former magistrates who resigned from office absolutely more than two years prior to the current application should be treated as new applicants.

**Procedure where an advisory committee has implemented a formal policy of refusing transfers**

- 5.128. Where an advisory committee has, with the concurrence of the Senior Presiding Judge, put in place a general policy of refusing transfers in to a local justice area (LJA) a former magistrate seeking re-appointment in the LJA must be treated as a new applicant. However, this does not apply to former magistrates who previously sat in the same LJA. In these instances, paragraphs 5.114 to 5.118 above should be applied as appropriate.

**Disclosure and Barring Service checks**

- 5.129. All former magistrates, or those magistrates in the Supplemental List, who are selected for re-appointment or return to the Active List from the Supplemental List, must undergo a DBS check (see Part 4 of these Directions for guidance on DBS procedures) before their name is put forward to the Magistrates HR Team.
- 5.130. Advisory committees should exercise their reasonable discretion as to the point at which the checking procedure is instigated. The overall aim should be to ensure that checks are completed in sufficient time, so as to minimise the risk of delaying the re-appointments process.

**Procedure after re-appointment or return to the Active List**

- 5.131. A magistrate who is recommended for return to the Active List should complete a new declaration and undertaking form.
- 5.132. There is no need for magistrates to take the Oath of Allegiance or the Judicial Oath again on re-appointment.
- 5.133. Re-appointed magistrates or those returning to the Active List from the Supplemental List must undertake any training recommended by the chairman of the TDC.
- 5.134. Following re-appointment or return to the Active List, the justices' clerk and bench chairman should meet the magistrate to welcome them to the bench and introduce them to local procedures. The chairman of the TDC may wish to attend this meeting or meet with the magistrate separately to discuss any training needs. Details should be obtained of the magistrate's experience (whether they were on the list of approved court chairmen, authorised to sit in the youth or family court, acted as a mentor or appraiser

etc) and whether, and within what timescale, they would wish to apply to resume any former responsibilities and/or take up new ones. A checklist for these discussions is attached at **Appendix 5E**.

### **Change of name, address, etc**

- 5.135. Advisory committees must notify the Magistrates HR Team immediately when a magistrate changes their name or address and this includes when committees are notified of a Supplemental List magistrate moving out of or into their area.