

## Part 2 – Eligibility for the magistracy

Temporary amendments have been made to the Lord Chancellor and Secretary of State's Directions for Advisory Committees on Justices of the Peace in response to the impact COVID-19 has had on recruitment to the magistracy. The temporary directions are written in red and will return to their pre-amendment form once the time for this exceptional need has passed. Responsibility for determining when these temporary measures start and end lies with the Senior Presiding Judge.

### Factors affecting eligibility

#### Age and reasonable length of service.

- 2.1. The minimum age of appointment as a magistrate is 18. The statutory retirement age is 75. The Senior Presiding Judge cannot, by law, appoint a candidate outside of this age range.
- 2.2. Candidates applying for appointment to the magistracy are expected to commit to serving a minimum of five years. This policy reflects the fact that a new magistrate requires considerable investment in training and support, and the practical limits of Advisory Committees in recruiting new magistrates.
- 2.3. The Senior Presiding Judge will not generally appoint a candidate who is less than five years from the statutory retirement age at the time of application.

#### Nationality and residence

- 2.4. British nationality is not a requirement, but all candidates must be willing to take the Oath of Allegiance<sup>1</sup>.
- 2.5. Candidates must permanently reside in the jurisdiction of England and Wales at the time of application.
- 2.6. Candidates in the process of, or intending to, seek asylum or apply for indefinite leave to remain in the UK are ineligible.
- 2.7. To maintain the principle of local justice, candidates should apply to an area close to where they live or work.
- 2.8. Where an Advisory Committee receives an application from a person who does not live or work within a reasonable distance of the area they are applying to, candidates should be encouraged to apply to the area in which they live or work. Applications may be transferred to a different area with the candidate's agreement, if there is an open recruitment campaign.

#### Health / Disability

- 2.9. The Senior Presiding Judge will not appoint anyone whose health prevents them from fully carrying out the duties of a magistrate.
- 2.10. Applications are welcome from people with a disability who are able, either

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<sup>1</sup> Section 6, Promissory Oaths Act 1868

unassisted or with the benefit of reasonable adjustments, to carry out the full range of duties of a magistrate.

2.11. Further information on considering applicants with a disability and requests for reasonable adjustments is set out in Part 3 of these Directions.

### **Occupations, voluntary work and political activity**

2.12. Certain occupations and activities will, or may, depending on the circumstances, affect the eligibility of a person to become, or remain, a magistrate. Guidance on particular occupations and activities potentially affecting eligibility appears at **Appendices 2A** (criminal court) and **2B** (family court). Whilst every effort is made to make the eligibility guidance as comprehensive and easy to follow as is possible, unusual cases may arise which are not covered by these appendices. Advisory Committees should contact Judicial Office HR if they need advice on handling unusual cases.

2.13. During the period of restrictions and other special measures in response to the COVID-19 emergency, Appendices 2A and 2B should also be read with the modifications explained in paragraph 2.15, which reduce the period of disqualification on account of having had a certain occupation for people who returned to that occupation in response to the emergency.

2.14. Appendices 2A and 2B list a number of occupations (for example, being a police officer) which disqualify a person engaged in that occupation from being eligible to apply to be appointed as a magistrate. For such an occupation, referred to below as a "disqualifying role", the appendices also prescribe a period of two years after leaving the disqualifying role during which a person remains ineligible to apply. As part of the response to the COVID-19 emergency, the Government has requested assistance from a range of key workers who are prepared to return to their roles on a temporary basis to aid the national response, and such roles include a number of those listed in the appendices as disqualifying roles. In relation to those who have returned to such roles during the emergency for a period of no more than six months, the rule as to disqualification is modified as follows. Where a person has, in response to the emergency, returned to a disqualifying role and had immediately before doing so not been in such a disqualifying role for two years or more (and so would have been eligible to apply), that person will still be disqualified while holding the role, but on leaving it again will be ineligible to apply for six months, rather than the two years specified in Appendices 2A and 2B. Paragraph 2.16 below deals with persons who, prior to returning to a disqualifying role, had been out of that role for a period of less than two years. Neither this paragraph nor paragraph 2.16 applies where the period spent in the disqualifying role after returning to it exceeds six months.

2.15. Where a person who returns to a disqualifying role had before returning not held that role for a period shorter than two years, that person will, after leaving the disqualifying role again, be eligible to apply within a shorter period than the two years specified in Appendices 2A and 2B. The length of that period will be calculated by reference to the length of time the person had been out of the disqualifying role before returning to it.

A person who was out of the disqualifying role for 18 months or more before returning to it will be eligible to apply 6 months after leaving the role. A person who was out of the disqualifying role for period of less than 18 months before returning to it will be eligible to apply after a period calculated by subtracting the previous period out of the role from the two years specified in Appendices 2A and 2B. For example, where the period out of the role before returning to it was 14 months, the person would on leaving that role be eligible to apply after 10 months; and where the period out of the role before returning to it was 12 months, the person would on leaving the role be eligible to apply after 12 months.

2.16. Applications from candidates who hold an occupation or office that automatically disqualifies them from appointment must not be considered.

2.17. Where disqualification may depend on the particular circumstances, Advisory Committees should examine those circumstances to establish whether a conflict is likely to arise and whether it can be effectively managed. Relevant factors include:

- nature and geographic area of the work;
- any attendance in relation to the work at the court to which the applicant/magistrate may be assigned; and
- frequency of any contact with persons likely to appear before the bench.

2.18. Where an existing magistrate accepts any position or office which would have categorically disqualified them from appointment, they must immediately inform the Bench Chair and the Advisory Committee Secretary. The general expectation is that the magistrate will resign.

2.19. In all other circumstances, the presumption should be that the magistrate may sit unless there is a real danger or appearance of a conflict of interest. Advisory Committees should consider whether potential conflicts of interest could be managed by restricting the person's magisterial duties, or with a transfer to another Local Justice Area in accordance with Part 5 of these Directions.

### **Contacting an employer for further information**

2.20. Advisory Committees or their Secretaries may consider it necessary to contact a candidate's/magistrate's employer for further information on their occupation or duties. They must obtain the candidate's/magistrate's consent beforehand.

### **Undertaking to give up voluntary work which conflicts with the role of magistrate**

2.21. A person who does voluntary work which would disqualify them from appointment may still be eligible to apply if they are prepared to undertake to give it up on appointment. If appointed they should be required to provide confirmation in writing that they have given up the voluntary work prior to commencing sitting.

### **Convictions, orders and other legal proceedings**

2.22. The Senior Presiding Judge will not appoint anyone in whom the public would be unlikely to have confidence.

2.23. When considering candidates who have been the subject of any order of a court, whether civil or criminal, Advisory Committees need to consider:

- the nature of the matter;
- how long ago it occurred;
- any penalty or order;
- the seriousness of any offence; and
- any subsequent behaviour or further offences.

2.24. If the Advisory Committee decides to recommend a candidate with convictions (except for motoring offences – see below), it must set out its reasons in the appointments' submission.

2.25. A candidate who shows a disregard for the law must not be recommended for appointment.

### **Motoring offences**

2.26. The Senior Presiding Judge will not appoint a person who has been convicted of:

- a serious motoring offence resulting in disqualification from driving for **twelve months or more** within the last **ten years**; or
- a serious motoring offence resulting in disqualification from driving for **less than twelve months** within the last **five years**; or
- motoring offences which have resulted in **six penalty points or more for one offence** within the last **five years**, or **nine penalty points** for totting-up purposes within the last **five years**.

2.27. Advisory Committees should not consider applications from candidates who fall into the categories above. Applications from candidates who have incurred penalties other than those listed above should consider the factors set out at 2.23.

### **Family or close friends**

2.28. Where the family or close friends of a candidate have convictions or cautions, or have been given penalty notices for offences, each application should be considered individually by the Advisory Committee; nobody should be automatically refused. Committees should consider the following factors:

- the nature, number and seriousness of the offences (or involvement in criminal activity), and when they took place;
- the extent of contact with the relative or friend;
- whether or not the candidate appears to condone the offence; and
- whether the circumstances, if they became generally known, might bring the magistracy into disrepute or cause the candidate's standing as a magistrate to

be questioned.

### **Bankruptcy and liquidation**

2.29. The Senior Presiding Judge will not appoint a candidate who:

- is an undischarged bankrupt; or
- has a debt relief order or interim debt relief order against them or entered into an arrangement with their creditors; or
- is, or was, the director of a company that went into liquidation in the past five years; or
- who is disqualified, or has in the last 10 years been disqualified, from acting as a director of a company.

2.30. Applications from candidates who fall into any of these categories must not be considered by Advisory Committees.

### **Divorce and proceedings relating to children**

2.31. An applicant or magistrate to the family court should not be appointed or sit in the family court if they have children (under the age of 18) who are currently, or expected to become, the subject of court proceedings or a court order (for example in respect of residence, contact, specific issues or financial maintenance) until those proceedings have concluded. This includes individuals in the process of a divorce if they have children who are expected to become subject to a court order.

2.32. Other magistrates, subject to advice from the Secretary to the Advisory Committee, will normally be permitted to continue serving on the family panel or in the criminal court (including youth court) while going through a divorce.

### **Court orders relating to maintenance**

2.33. If an applicant or magistrate is subject to, or the beneficiary of, a financial court order (for example, a maintenance assessment order or child maintenance order) enforceable by the same Local Justice Area/family panel area to which an appointment might be made, or the magistrate sits, the Advisory Committee must undertake to ensure that arrangements are made to transfer the order to another area if it becomes enforceable. Advisory Committees should bear in mind that the transfer of the court order can be a lengthy process and notify candidates or magistrates of any impact on their application or sittings.

### **Relationships to other serving magistrates**

2.34. There is no bar to a close relative of a magistrate being appointed to the same bench, but the magistrates should not sit on cases together.

2.35. Any pastoral matter involving the spouse or close relative of a Bench Chair should instead be dealt with by a neighbouring Bench Chair.

### **Crime and Disorder Act 1998**

- 2.36. It would not be appropriate, given the role of the various crime and disorder strategies, for magistrates to be directly or closely involved in their day-to-day management and operations. However, it is important that the views of courts are fed into the planning process. To achieve this, there need to be effective channels of communication between courts and the various bodies at a suitably strategic level. The extent to which magistrates become involved is a matter they should discuss with their Bench Chair and Advisory Committee Secretary.
- 2.37. It is recognised that magistrates who are county or district councillors, will probably have had some input into the planning of crime and disorder strategies. This is not considered a problem, provided they do not act as spokesperson on the subject for the local authority.
- 2.38. In the case of county or district council employees, concerns are unlikely to arise, unless the magistrate holds a prominent position or works specifically on crime and disorder issues.

### **Rehabilitation courses**

- 2.39. Magistrates may observe rehabilitation courses for drink-drive offenders or similar schemes, subject to advice from their Advisory Committee Secretary. They may also sit on the management board for such schemes.

### **Government steering groups**

- 2.40. There is generally no objection to magistrates serving on these groups. However, each case should be considered on its merits with the benefit of advice from their Advisory Committee Secretary.