

## **Part 5 – Post appointment matters**

### **Guiding principle**

#### Part 5 of the Directions is relevant to conduct advisory committees only

- 5.1. Responsibility for the deployment of judicial office holders' rests with the Lord Chief Justice as Head of the Judiciary. The Lord Chancellor, the Lord Chief Justice and Senior Presiding Judge 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 chair, or a committee member nominated to act on the chair's behalf. The secretary to the committee should therefore bring the matter to the chair or nominated member's immediate attention.
- 5.3. The administrative functions of an advisory committee will be carried out by the secretary, or officials 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.

### **Management of sittings**

- 5.5. Bench chairs have responsibility for the management of sittings. This includes having discussions with magistrates where there are concerns about low or high sittings with a view to resolving matters, and taking appropriate action, such as providing further pastoral care or training. Decisions as to whether a conduct investigation is appropriate rests with the chair of the conduct advisory committee.
- 5.6. To ensure advisory committees are aware of sitting levels and trends, bench chairs will provide a retrospective annual or bi-annual report outlining this information, highlighting those magistrates whose sittings are below the minimum or above the maximum sittings required and explaining any decisions/action they have taken. The report should also provide details to advisory committees on those magistrates to whom they have granted leave of absence. The final decision as to the action required rests with the conduct advisory committee.
- 5.7. On a referral by a bench chair, the advisory committee can determine what action is required including whether the matter is dealt with as a pastoral or training matter by the bench chair, revised rota arrangements by HMCTS or investigation under the Judicial Conduct (Magistrates) Rules 2014.

### **Minimum sittings**

- 5.8. 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.
- 5.9 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.
- 5.10 Where a magistrate is 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.
- 5.11 Where the alternative would be for the Lord Chancellor and Lord Chief Justice to consider sanctions against the magistrate, the advisory committee will deal with the matter in accordance with the Judicial Conduct (Magistrates) Rules 2014.
- 5.11A. Magistrates who sit in both the adult court and in either the youth and family 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.
- 5.12. 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**

- 5.13. Magistrates who sit in one jurisdiction should not sit for more than **35 sitting days** each year. The Lord Chancellor regards **50 sitting days** each year as the appropriate maximum for those who sit in more than one jurisdiction.
- 5.14. On occasions, it may be helpful for the bench chair, 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.

### **Temporary increase in maximum sittings days**

- 5.14A. In areas where there are insufficient magistrates to meet the business needs of the court, the maximum sitting limit for magistrates for those who sit in more than one jurisdiction may be increased on a temporary basis to 100 sitting days.
- 5.14B. This decision should be made jointly by the Head of Legal Operations (or his or her delegated deputy) and the bench chair. The Chair(s) of any family panel(s)

concerned and the Designated Family Judge should be consulted before a decision is made with regards to family magistrates.

- 5.14C. The increased limit should be kept under review and maintained only for as long as is necessary to meet business needs.

### **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)).

### **Attendance**

- 5.16. Magistrates should sit so that:

- they gain experience of, and remain familiar with, their duties;
- they maintain competence;
- 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. In order to achieve and retain a more diverse bench, the Lord Chancellor and the Lord Chief Justice encourage flexibility towards magistrates whose other commitments make it difficult for them to sit at regular intervals throughout the year.

### **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.

### **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 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.
- 5.23. Sittings at any of the following are counted as attendances:
- adult court (both ordinary and special sittings);
  - family court;
  - youth court;
  - the Crown Court.
    - Sittings at another bench should be count towards the total number of sittings by an individual magistrate.
    - 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**

- 5.24. 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.
- 5.25. 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**.
- 5.26. Family chairs 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 chair).

### **Sitting exclusively in one jurisdiction**

5.27. Magistrates who are authorised to hear cases in the family court and the crime court may opt to sit exclusively in one or the other provided the following three provisions are met:

- There is sufficient work to enable the magistrate to achieve the minimum sittings requirement (which is **13 days/26 half days a year**), including back-up work where cases settle;
- this will not deprive other magistrates of the chance to meet at least their minimum sittings requirements; and
- it would not impact adversely on the ability of the Heads of Legal Operations to manage court work.

Requests to sit exclusively should be approved by the bench chair in consultation with the relevant Panel Chair and the F/JTAAAC.

5.28. Magistrates who have discharged their sitting obligations exclusively in one jurisdiction may subsequently return to sit in another jurisdiction if business needs allow. They will be required to undertake such refresher training (including appraisal) as the F/JTAAAC require.

## Leave of absence

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

Leave of Absence	Approval	Notes
Up to 12 months	Bench Chairs	<ul style="list-style-type: none"> <li>• Advisory committees must be notified of approved request.</li> <li>• Periods of absence must be reviewed by the Bench Chairs every three months.</li> <li>• Advisory committees must record absence on central database used by Judicial HR</li> <li>• Bench Chairs have discretion to refer any leave of absence issue to the advisory committee</li> <li>• Where any period of absence exceeds 12 months in a 24month period the bench chairman must refer the magistrate to the advisory committee.</li> <li>•</li> </ul>
More than 12 months in a 24month period	Judicial HR	<ul style="list-style-type: none"> <li>• Advisory committee must refer application, with their recommendation.</li> </ul>
		<ul style="list-style-type: none"> <li>• Where Judicial HR approves application, the advisory committee must notify the Bench Chair.</li> <li>• It is unlikely that leave of absence of more than 18 months will be granted.</li> </ul>
Absence due to illness	Not required	<ul style="list-style-type: none"> <li>• Leave of absence not required but advisory committee must monitor.</li> <li>• Advisory committees must record absence on central database used by Judicial HR</li> <li>• If absence exceeds 18 months, Bench Chairs must discuss with magistrate whether entry in supplemental list might be appropriate.</li> </ul>

When expecting a baby (up to 52 weeks)	Not required	<ul style="list-style-type: none"> <li>Magistrate should inform Bench Chairs, advisory committee secretary and Head of Legal Operations of intention to take leave asap</li> <li>Advisory committees must record absence on central database used by Judicial HR</li> </ul>
Absences for personal reasons	Not required	<ul style="list-style-type: none"> <li>When magistrate refrains from sitting because of, e.g., involvement in court proceedings, financial difficulties, or the conduct of relatives or friend.</li> <li>Advisory committees must record absence on central database used by Judicial HR.</li> <li>Bench Chairs should monitor and report to advisory committee when exceeds 12 months.</li> </ul>

The Lord Chief Justice's Guidance to Bench Chairs on pastoral matters provides guidance on Occupational Health referrals for magistrates who require these due to long-term sickness or to assess fitness to perform the role.

#### **Absence for longer than 18 months**

- 5.30. Where a magistrate has been absent from the bench for longer than 18 months the advisory committee should initiate action to regularise the magistrate's position.
- 5.31. In the first instance, the advisory committee should ask the bench chair to meet with the magistrate to discuss whether or not they are likely to return 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.
- 5.32. Where the magistrate is unwilling to resign, or where the bench chair is unable to make contact with the magistrate, the matter should be referred to the advisory committee secretary. Cases should be handled sensitively.
- 5.33. 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.

- 5.34. Where a magistrate returns to sitting after a long absence, the chair of the FJ/TAAAC should be notified so that the magistrate is supported.

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

If an advisory committee member wishes to transfer from their current advisory committee to a different one, the member should approach their advisory committee chair to discuss their reasons for wanting to transfer. Generally, this will be because they have either changed home address or the location of where they work. The Secretary of the advisory committee to which the member is currently appointed should contact the Secretary of the advisory committee to which the member wishes to transfer to inform them of a transfer request. When making the decision for the transfer the advisory committee will need to consider whether they have any vacancies and the balance of magistrates/non- magistrates on their committee. The timings of any move should be discussed and agreed with the current advisory committee chair to ensure that ongoing committee commitments are not affected. Once arrangements are in place, Judicial HR should be informed of the effective date of the transfer so that E-HR can be amended. Advisory committee members can only serve for nine years in total, regardless of how many advisory committees they may have served in

### **General provisions**

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

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

- 5.37. Magistrates have no automatic right to transfer. Applications should generally be granted unless there are sound reasons to refuse them (see 'Reasons to refuse' below).
- 5.38. The transfer process is outlined below.

#### **Transfer Process**

- i. Magistrate completes application form (Appendix 5A) and sends to advisory committee secretariat. Secretariat acknowledges receipt of application.
- ii. Secretariat checks for circumstances which could trigger refusal of application or referral to the Senior Presiding Judge via Judicial HR (Paragraphs 5.48 – 5.52)
- iii. Secretariat refers application to current bench chair.
- iv. Current bench chair considers application in line with paragraphs 5.48



– 5.52

- v. If refused by current bench chair, advisory committee secretariat notifies applicant on Appendix 5C to seek a review of this decision see paragraphs 5.53 and 5.54
- vi. If they are content for application to proceed, current bench chair consults F/JTAAAC for information to incorporate into Appendix 5B, including assessment of competence and anything relevant from appraisal reports. Bench chair completes Appendix 5B and sends to advisory committee secretariat, copying to the applying Magistrate
- vii. Secretariat acknowledges receipt and processes application (or passes to relevant counterpart if transfer destination is in a different committee area with a different secretary).
- viii. Receiving secretariat forwards application, reference and recommendation from advisory committee to receiving bench chair for consideration
- ix. If destination area is fully subscribed the magistrate should be asked to take a leave of absence should they not be able to fulfill their minimum sitting requirements as per Direction 5.46.
- x. If applications are approved, receiving bench chair notifies receiving secretariat of decision. Secretariat informs HR, who will normally approve the proposal on behalf of the Senior Presiding Judge.
- xi. Judicial HR informs receiving secretariat of outcome, copied to the current secretariat. Receiving bench chair formally reassigns magistrate and secretariat communicates outcome to magistrate on Appendix 5C.
- xii. Receiving bench chair arranges introductory meeting with magistrate. F/JTAAAC chair can also attend to discuss training needs. Checklist for discussions is at Appendix 5D

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

- 5.39. The expectation is that magistrates will be requesting a transfer to an area in which they either live or work as there is a need for them to show they have a good understanding of crime/family and social issues in the area in which they wish to serve.
- 5.39A Magistrates must have received their threshold appraisal prior to requesting a transfer, save where there has been a significant change in circumstances since appointment
- 5.40. 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 chair should make a decision with the concurrence of the advisory committee. If agreement cannot be reached, the matter should be referred to Judicial HR, who will seek direction from the Senior Presiding Judge.
- 5.41. Applications from magistrates who are, or who become, involved in conduct proceedings must be held in abeyance for processing until the proceedings are concluded.
- 5.42. Where a magistrate has been subject to formal disciplinary sanction following conduct proceedings, this does not justify rejecting their application.

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

- 5.43. A magistrate whose application has been refused by a bench chair may request a review by the Senior Presiding Judge.
- 5.44. Requests for review should be sent to Judicial HR within **ten working days** of the decision being communicated to the magistrate.

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

- 5.45. A local justice area should be regarded as fully subscribed if:
- average sittings for the bench are below 20 sitting days<sup>1</sup> per year; and
  - it is envisaged that accepting any transfers within the following 12 months would prevent magistrates from attaining minimum sitting requirements.
- 5.46. Magistrates who are unable to transfer due to the receiving area being fully subscribed, and who cannot maintain their minimum sitting requirements due to circumstances related to their application to transfer should apply for a leave of absence. Where there is no prospect of a vacancy arising after 18 months they should be encouraged to consider applying to be entered in the supplemental list. It is important to note that magistrates cannot be compelled to do so.

- 5.50. Magistrates must complete any necessary training as directed by the local TAAAC following a period of absence in these circumstances and prior to returning to active sitting.

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

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

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<sup>1</sup> A "sitting day" equates to two half-day sittings.

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

5.52. 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 Judicial 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 chair.

## **The supplemental list**

5.53. This section describes the Supplemental List for England and Wales and when and how a magistrate should be entered in it.

### **General**

5.54. 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 of the Chancery. The clerk of the crown in Chancery is also the Permanent Secretary of the Ministry of Justice.

5.55. 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 transferred from that list.

5.56. 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 by the Conduct Advisory Committee

### **Retirement**

5.57. 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 chair 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 Judicial HR of such occurrences; 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 advisory committee must notify Judicial HR 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**

- 5.58. 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 advisory committee may make a recommendation to the Lord Chancellor as to a magistrate's suitability to have their name transferred to the supplemental list.
- 5.59. 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 normal cycle of appraisals; 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.
- 5.60. Applications to enter a name in the supplemental list should be made in writing to the advisory committee, who should then consult the bench chair and the chair of the relevant F/JTAAAC before making their recommendations on the application.
- 5.61. 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 apply to the Lord Chancellor, to reconsider the matter.
- 5.62. 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.
- 5.63. Magistrates in the Supplemental List who wish to return to the active list, and for whom there is a vacancy on the bench they wish to resume sitting at, would need to be interviewed informally by the advisory committee (in whatever way is considered appropriate) to ensure that no exceptional circumstances apply and to assess any training needs. Magistrates wishing to return to the Active list must complete Appendix 5E to assist with discussions. If such a formal meeting takes place, a minute of the meeting should be taken.
- 5.64. 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 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**

- 5.65. The Courts Act 2003 does not provide authority for supplemental list magistrates to perform certain acts, as the majority of such acts do not require statutory authority.
- 5.66. 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>2</sup>).
- 5.67. Magistrates on the Supplemental List must inform the advisory committee secretary for their existing area if they change address. The secretary must input the new address on E-HR. If the move is to an area covered by another advisory committee, they must notify the advisory committee of the new area, that it has a magistrate on the supplemental list now residing in its area. Advisory committees and local benches are encouraged to keep in touch with magistrates in the Supplemental List as appropriate.
- 5.68. Magistrates will be sent a letter with a note explaining what being in the Supplemental List means.

## **Complaints about Supplemental List magistrates**

- 5.69. If an advisory committee receives a particularised complaint about the conduct of 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 Conduct (Magistrates) Rules 2014.

## **Resignation, moves from active list, retirement and death**

### **Resignations**

- 5.70. A magistrate may, at any time, resign from judicial office completely 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 service, on application by the magistrate.
- 5.70A. Where a magistrate wishes to resign from judicial office completely, they should notify the secretariat of this. The secretariat should amend E-HR to reflect the effective date of resignation and advise Judicial HR. Judicial HR will issue the appropriate letter to the magistrate. Magistrates who resign from judicial office completely will not have their name entered onto the supplemental list unless they make the application to have their name entered on the list before they have resigned.

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<sup>2</sup> [www.benchmark.sut1.co.uk/join/](http://www.benchmark.sut1.co.uk/join/) (initial registration required).

## **Voluntary moves from the Active List**

- 5.70B. Where a magistrate notifies the secretariat of their intention to move from the Active List and applies for their name be entered on the Supplemental List, the advisory committee should consider this request. If the advisory committee has no concerns, the secretariat should inform Judicial HR who will seek approval from the Lord Chancellor. Where an advisory committee has concerns, the Secretary should write to the magistrate providing reasons for the concerns and informing them their right to have their application considered by the Lord Chancellor. If a magistrate wishes their application to be considered by the Lord Chancellor, this request should be relayed to Judicial HR along with the advisory committee's concerns. Judicial HR will obtain the Lord Chancellor's decision.
- 5.70C. Where a magistrate notifies the secretariat of their intention to move from the Active List and the magistrate has not applied for their name to be entered onto the Supplemental List, the advisory committee should consider the application in accordance with paragraph 5.54 above. If the committee consider the magistrate suitable, this should be relayed to the secretariat who will ask the magistrate if they wish to make such an application. If the magistrate would like to request that their name be entered in the Supplemental List, the secretariat should advise Judicial HR, who will send the request to the Lord Chancellor for consideration. Judicial HR will process in accordance with the Lord Chancellor's decision and will inform the secretariat.
- 5.70D. Where advisory committees do not consider that a magistrate is suitable to be entered into the supplemental list, the advisory committee secretariat will inform Judicial HR. Judicial HR will issue the appropriate letter to the magistrate confirming their resignation from judicial office.

## **Retirement**

- 5.71. Three months before a magistrate reaches their 70<sup>th</sup> birthday, Judicial HR will write to the advisory committee secretary to confirm the date of retirement from the active list.
- 5.72. The secretary should notify Judicial HR as soon as possible of any exceptional circumstances and of any personal matters which might affect the wording of the retirement letter.
- 5.73. Officials will prepare a retirement 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**

- 5.74. 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.
- 5.75. If an Advisory committee secretary becomes aware of the death of a Supplemental List magistrate, they must also report it to the Judicial HR Team.

- 5.76. It is not usual for a letter of condolence to then be sent 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 only recently entered in the Supplemental List), then the secretary should inform Judicial HR accordingly.

## Re-appointments

- 5.77. 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 (where they are below the age of 70).
- 5.77A Former magistrates who wishing to return within two years of having left the active list should complete Appendix 5E for the advisory committee's consideration. Those who left the active two or more years prior to their wish to be re-appointed, should complete a full application form for consideration by the advisory committee.
- 5.78. There is no requirement that former magistrates who apply for reappointment should have lived in the area to which they are applying for 12 months.
- 5.79. 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.
- 5.80. All recommendations for re-appointment should be submitted to Judicial HR for approval by the Lord Chancellor and the Lord Chief Justice.

## Magistrates in the Supplemental List

- 5.81. 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 maybe returned to the Active List and resume sitting without needing to complete an application form, or attend formal interview. Appendix 5E should be completed so that any changes in circumstances can be taken into consideration by the advisory committee.
- 5.82. While it is not necessary for the magistrate to provide external referees, the conduct advisory committee secretary should, where sufficient information is held, send the standard reference form (**Appendix 3B**) to the magistrate's previous advisory committee to obtain a reference from the chair of the magistrate's former bench
- 5.83. 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 and one non-magistrate member of the conduct advisory committee and the advisory committee secretary, or nominated representative, should be present to deal with any queries.

- 5.84. 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 decision to treat them as a new applicant.

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

- 5.85. The general expectation is that, provided they resigned less than two years ago, former magistrates who are not in the Supplemental List 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.
- 5.86. While it is not necessary for the former magistrate to provide external referees, the advisory committee secretary must send the standard reference form (**Appendix 3B**) to the former magistrate's previous advisory committee to obtain a reference from the chair of their former bench.
- 5.87. 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. The advisory committee secretary, or their deputy, should be available to deal with any queries.
- 5.88. Former magistrates who resigned more than two years prior to the current application should be treated as new applicants.

#### **Disclosure and Barring Service checks**

- 5.89. Former magistrates and those in the supplemental list who are selected for re-appointment or return to the Active List, must undergo a DBS check (see Part 3 of these Directions for guidance on procedure) before their name is put forward to Judicial HR.

#### **Procedure after re-appointment or return to the active list**

- 5.90. A magistrate who is recommended for return to the Active List should complete a new declaration and undertaking form.
- 5.91. There is no need for magistrates to take the Oath of Allegiance or the Judicial Oath again on re-appointment.
- 5.92. Re-appointed magistrates or those returning to the Active List from the Supplemental List must undertake any training recommended by the chair of the F/JTAAAC.
- 5.93. Following re-appointment or return to the Active List, the local senior legal manager and bench chair should meet the magistrate to welcome them to the bench and introduce them to local procedures. The chair of the F/JTAAAC 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 chairs, 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**

- 5.94. Advisory committee support teams must update E-HR 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.