

Part 6 – Reinstatements to the Magistracy

Introduction

This Part of the Lord Chancellor's Directions to Advisory Committees on Justices of the Peace has been made following legislation increasing the judicial mandatory retirement age to 75. The Public Service Pensions and Judicial Offices Act 2022 allows retired magistrates aged between 70 and 75 (on 10 March 2022, the date the Act received Royal Assent) to apply to be reinstated to the magistracy where there is a business need.

Part 6 of the Directions is relevant to Conduct Advisory Committees.

Part 6 introduces a requirement for the Judicial Business Group to make a business decision on recruitment needs in conjunction with Recruitment Advisory Committees considering existing and future recruitment planning for new magistrates. Once numbers are determined, handling the process for reinstatements is principally the responsibility of Conduct Advisory Committees. However, the processes are largely administrative in nature, being different from the general process for magistrates returning from the supplemental list in that there is no requirement under Part 6 for the Conduct Advisory Committee to seek a reference from the former Bench Chair or hold a meeting with the returning magistrate. The decision of Conduct Advisory Committees to recommend reinstatement will be based exclusively on compliance with the criteria as contained in the application form in Part 6A. In the unlikely event of a magistrate applying for reinstatement answering positively to questions concerning convictions, cautions and civil orders, Conduct Advisory Committees will highlight any issues in its recommendation for consideration by the Lord Chancellor and Lord Chief Justice.

Determination of any training requirements following a decision of the Lord Chancellor and Lord Chief Justice to reinstate are the responsibility of the Training Approvals, Appraisals and Authorisation Committees.

General provisions

- 6.1. 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.
- 6.2. The administrative functions of an Advisory Committee will be carried out by the Secretary (or Deputy Secretary or other officials nominated to act on the Secretary's behalf).
- 6.3. This section specifies the criteria and process on when and how Advisory Committees may recommend reinstating magistrates, who ordinarily will have retired (having turned 70 before 10 March 2022) but are under the age of 75. Reinstatements are made by the Lord Chancellor with the concurrence of the Lord Chief Justice. The Lord Chief Justice has delegated this function to the Senior Presiding Judge.
- 6.4. The legislative provision is intended to bridge the shortages within the magistracy at

a time of increased demand without negatively impacting planned recruitment and other initiatives to improve diversity within the magistracy.

- 6.5. As reinstatements are linked to business need, the ability to return cannot be guaranteed to each individual seeking reinstatement to the magistracy. Any magistrate who unsuccessfully seeks reinstatement can be added to a reserve list, more details of which can be found at 6.35 in this document.

Eligibility to apply for reinstatement

- 6.6. The Lord Chancellor and Lord Chief Justice are committed to improving diversity across the judiciary. The Recruitment and Attraction Programme has been convened to improve recruitment to and diversity within the Magistracy. Reinstatements to the magistracy must not have the effect of undermining future recruitment which will bring in new candidates of diverse backgrounds and diverse life experiences to ensure the magistracy is representative of the public it serves. Advisory Committees should continue planned future recruitment.
- 6.7. Individuals must be on the supplemental list and aged between 70 and 75 on the date of Royal Assent (10 March 2022) in order to be eligible to apply for reinstatement.
- 6.8. Where an individual has been trained in specific roles within the magistracy, for example appraiser and/or mentor etc., and have made an application for reinstatement based on that role in response to the stated business need in that area, they must be willing to continue in those roles if required, subject to the provision of appropriate refresher training where determined necessary by Training, Approvals, Authorisations and Appraisals Committees. However, reinstatement to any or all specific roles previously held is not guaranteed as part of this process.
- 6.9. Individuals must have access to IT and be willing to use digital technology as part of their role as a magistrate.
- 6.10. Individuals must have:
- undertaken all essential training directed by the Judicial College and Training Approvals, Authorisations and Appraisals Committees;
 - been satisfactorily appraised within three years preceding their retirement; or if this has not been possible in 20/21 due to Covid-19, been appraised within four years preceding their retirement; and
 - have met the minimum sitting requirement within 12 months preceding their retirement¹ or, if this has not been possible in 20/21 due to Covid-19, met the minimum sitting requirements in 19/20.
- 6.11. Individuals must not have been subject to any conduct or disciplinary proceedings at the time of their retirement.

¹ If this has not been possible in 20/21 due to Covid-19 impacts, the individual **must** have met the minimum sitting requirements in 19/20

Reasonable length of service (for reinstatement)

- 6.12. Applicants should be prepared to offer a reasonable length of service, which the Lord Chancellor considers in this instance to be six months before reaching the age of 75. This reflects the investment in training for those who have not sat for some time.
- 6.13. Individuals who cannot commit to the expected reasonable period of service should provide reasons why they should be considered regardless, in light of the area's business need.

Assignment to Local Justice Area

- 6.14. Individuals are generally expected to apply to the Local Justice Area within a reasonable distance to which they live or work at the time of application for reinstatement. This principle applies even if it appears that there are a greater number of vacancies in a neighbouring Local Justice Area.
- 6.15. Where a Local Justice Area has more applicants than vacancies, and a neighbouring Local Justice Area has more vacancies than applicants, the Advisory Committee may offer an individual the opportunity to serve in a neighbouring area. Applicants may need to be willing to sit in neighbouring Local Justice Areas if they have specific skill sets that meets business requirements in that area which are not required in their Local Justice Area.

Number of reinstatements

- 6.16. The number of magistrates to be reinstated will be subject to business need in each Local Justice Area.
- 6.17. Advisory Committees will only be able to recommend reinstatement of magistrates up to the maximum number considered necessary in that area. In considering the number of magistrates to recommend for reinstatement, Advisory Committees must ensure that recruitment of new magistrates will not be reduced or constrained as a result.
- 6.18. Judicial Business Groups will determine the number of magistrates required in each Local Justice Area.
- 6.19. The types of roles and indicative numbers required for each role in each Region will be published alongside the application form for reinstatement to the magistracy.

Business Need Criteria

- 6.20. The Judicial Business Group, following the Judicial Deployment Protocol and factoring in planned recruitment in 21/22 and 22/23, will determine the number of magistrates required for each Local Justice Area.
- 6.21. The Judicial Business Group shall, in consultation with the Advisory Committees determine their business need for reinstatements to the magistracy. This will provide the maximum number of potential magistrates to be reinstated in each Local Justice

Area. As reinstatements are linked to business need, Advisory Committees should be clear that the ability of individual magistrates to return to the bench cannot be guaranteed.

- 6.22. The numbers and types of roles to be filled will vary in each Local Justice Area in recognition of varying local needs. In deciding these numbers, the following factors will be taken into consideration:
- the number of new magistrates to be recruited to the adult and family courts (including a target ratio for family magistrates recruited directly);
 - the number of active magistrates in post on implementation of the legislation and forecast likely numbers to continue to sit until the new mandatory retirement age of 75;
 - the number of magistrates and the numbers of Presiding Justices required on the adult bench and family and youth panels;
 - the number of appraisers and/or mentors required to support planned recruitment;
 - the desired timeframe for ordinary recruitment and succession planning within benches to fill the identified numbers for enhanced roles within the magistracy; and
 - the practicalities, timelines and resource costs of re-training retired magistrates.
- 6.23. To avoid impacting on future recruitment, priority will be given to those willing to fill the following roles which had been identified as business-critical (in line with training previously provided):
- Presiding Justice adult;
 - Presiding Justice youth
 - Presiding Justice family;
 - Appraisers;
 - Mentors;
 - Family magistrates; and
 - Welsh-speaking magistrates
- 6.24. Following consideration of the above criteria, reinstatements will usually be granted first to those are able to meet business need in other roles, and second to those who most recently moved to the supplemental list, reflecting the fact that the need for retraining is likely to be less, and priority will also be given to those who are able to meet the reasonable length of service expectation. If required, Advisory Committees may also consider granting reinstatements to those individuals who can undertake two or more of the roles specified above. Applications from those who did not hold

any of the roles specified above, but would return as adult wingers, will also be considered, in line with business need.

- 6.25. Reinstated magistrates will be informed to which jurisdiction(s) they have been reinstated and they may only sit in that or those jurisdiction(s) or in particular roles. Where the need to recruit magistrates to the adult court exceeds the need to recruit magistrates to the family or youth courts, magistrates applying for reinstatement with previous training in more than one jurisdiction may need to be appointed to limited jurisdictions. Reinstated magistrates and Presiding Justices in the youth court may be required to sit in both the adult and youth jurisdictions, or in the adult jurisdiction only.
- 6.26. Subject to business need and the existing procedures, reinstated magistrates able to give sufficient length of service may apply to their TAAAC for approval or authorisation to sit on a panel or undertake Presiding Justice training.

Process for applications for reinstatement

- 6.27. There is a single window of opportunity for individuals to seek to apply to return to the magistracy. Applications for reinstatement can be made from 15 February 2022.
- 6.28. Individuals seeking reinstatement to the magistracy should apply by **23:59 on Sunday 27 March 2022**. Applications for reinstatement will not be accepted after this date. Individuals seeking reinstatement to the magistracy should complete the form at Appendix 6A and submit this to the local Conduct Advisory Committee for the Local Justice Area they are seeking reinstatement to.
- 6.29. Advisory Committee Secretaries will take all reasonable efforts to notify magistrates over 70 but under the age of 75 on the supplemental list of the opportunity to apply for reinstatement. Personal data held on the E-HR database will be used to contact individuals. Individuals cannot seek to apply for reinstatement after the closing date on the grounds that they were unaware of this opportunity.
- 6.30. Applications will be considered against the business need criteria and date of retirement. No interviews will be held as part of this process.
- 6.31. Advisory Committees will make decisions on who to recommend for reinstatement within a maximum of six weeks of the closing date for applications.
- 6.32. Decisions of reinstatement will be made by the Lord Chancellor, with the concurrence of the Lord Chief Justice, based on recommendations for reinstatement from Advisory Committees
- 6.33. Notification of the outcome of the application for reinstatement will be provided in writing within 10 working days of the final reinstatement decision.
- 6.34. The decision of the Lord Chancellor is final and there is no right to review this decision. Where the Lord Chancellor decides not to reinstate a magistrate, the Lord Chancellor will write to the individual setting out the reasons for the decision and this will be communicated by Advisory Committees.
- 6.35. Advisory Committees should invite any magistrates wishing to return via this process

but not recommended for reinstatement due to a lack of immediate business need to join the “reserve list”, which may be called upon in cases of future business need. Magistrates must agree to their details being retained for this purpose and reserve lists will be managed by Advisory Committees.

Training

- 6.36. Training Approvals, Authorisations and Appraisals Committees will be notified of all magistrates who have been reinstated to identify any training needs and update their records.
- 6.37. Magistrates who are reinstated within 6 months of retirement and undertaken a sitting less than 9 months before reinstatement will not need to undertake refresher training prior to sitting, although they may request to attend such training if they feel they would benefit from it.
- 6.38. Reinstated magistrates who have been retired for 6 months or more or have not sat within 9 months of reinstatement must undertake refresher training as directed by the Training, Approvals, Authorisations and Appraisals Committees, who must have regard to the national minimum training provisions and any guidance issued by the Lord Chief Justice or on his behalf. Reinstated magistrates cannot resume sitting until this essential training has been completed.
- 6.39. Training requirements will vary depending on the length of time an individual has been retired. Reinstated magistrates will be expected to do some training or preparation for training in their own time.
- 6.40. Reinstated magistrates may need to undertake additional relevant training before sitting. It will be for the Training, Approvals, Authorisations and Appraisals Committees to determine what, if any, training is required following any guidance issued by the Lord Chief Justice or on his behalf. Training, Approvals, Authorisations and Appraisals Committees will arrange appraisals for magistrates in line with their appraisal scheme for all magistrates.

Disclosure and Barring Service (DBS) checks

- 6.41. Individuals recommended for reinstatement must have enhanced level DBS clearance before they can commence sitting.
- 6.42. Individuals seeking reinstatement will be asked to complete the DBS disclosure application within **10 days** of submitting their application and return it to Secretaries to submit immediately, before any decision on reinstatement is made.
- 6.43. It is important that individuals ensure the form is completed fully and correct otherwise there may be delays with forms being returned by DBS and potentially resulting in DBS penalty charges being incurred.
- 6.44. Advisory Committees will not receive copies of disclosure record certificates from the DBS. DBS certificates must be produced to the Advisory Committee Secretary (or a member of the Secretariat team), within **5 working days** of receipt, who must make a written note of the date when they saw it. DBS certificates can be produced either

by sending a scanned copy/attachment to an email, in the post, or in person.

- 6.45. The Advisory Committee may make a provisional decision on candidates but must not make a formal recommendation for reinstatement until they have seen the DBS certificate and are satisfied that the individual is a person in whom the public is likely to have confidence.
- 6.46. Requests by HMCTS to undertake DBS checks should not be treated as an indication that reinstatement has been approved. The sole purpose of requesting DBS checks in advance prior to final decisions being made is to reduce any delays between decisions on reinstatement and the commencement of sittings.

Post reinstatement matters

- 6.47. Following reinstatement, the local legal manager and bench chair should meet the magistrate to welcome them to the bench and, if appropriate, provide an update on local procedures. The Chair or a member of the Justices' Training Approvals, Authorisations and Appraisal Committees and/or Family Training Approvals, Authorisations and Appraisal Committees may wish to attend this meeting or meet with the magistrate separately to discuss any training needs.
- 6.48. There is no need for reinstated magistrates to take the Oath of Allegiance or the Judicial Oath again. Reinstated individuals will be expected to comply with the standards and expectations of those holding judicial office.
- 6.49. Reinstated magistrates must complete a new declaration and undertaking form before they commence sitting.
- 6.50. Individuals reinstated to the magistracy must comply with the minimum and maximum sitting requirements as set out in Part 5 of these Directions.
- 6.51. Reinstated magistrates will be assigned to the next available rota, but until that time they can undertake additional sittings upon reinstatement to fill any vacancies within the existing rota.
- 6.52. Reinstated magistrates will be required to undertake appraisals as required by the Training, Approvals, Authorisations and Appraisal Committees which will be directed in accordance with the *Judicial College Good Practice Guide for Training, Approvals, Authorisations and Appraisal Committees*.