

Part 5 – Post appointment matters

Guiding principles

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 Advisory 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.

Reasonable adjustments

- 5.4. In compliance with the Equality Act 2010 reasonable adjustments may be requested by any magistrate to assist them in carrying out the duties of a magistrate, such as specialist equipment or adaptations to court buildings.
- 5.5. Requests for reasonable adjustments should be made via email to the Advisory Committee Secretary.
- 5.6. The Secretary will assess the practicality of providing those judgements and consider what arrangements can be put in place to support the magistrate in carrying out their duties.
- 5.7. The presumption must always be in favour of finding ways in which adjustments can be provided. Advisory Committees should be as flexible as possible in considering how that can be achieved, for example, exploring the possibility of serving on a different bench to the one the magistrate is currently assigned to if adaptations to the court buildings are not possible.
- 5.8. Where the requested reasonable adjustment cannot be provided (e.g. because adaptations to the court buildings are not possible), there should be a discussion with the magistrate on the options available to find a suitable solution to the request.

Sitting requirements

- 5.9. 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 the 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

- 5.10. 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 Conduct Advisory Committee.
- 5.11. To ensure Advisory Committees are aware of sitting levels and trends, Bench Chairs must provide a retrospective annual report outlining this information. The report should include:
- details of those magistrates whose sittings are below the minimum or above the maximum sitting requirements;
 - explaining any decisions/action taken by the Bench Chair;
 - details of those magistrates to whom they have granted leave of absence.

The final decision as to the action required rests with the Conduct Advisory Committee.

- 5.12. On a referral by a Bench Chair, the Advisory Committee can determine what action, if any, is required. Actions available to the Advisory Committee include:
- Determining whether the matter is dealt with as a pastoral or training matter by the Bench Chair;
 - Considering whether it would be appropriate to request revised rota arrangements from HMCTS; or
 - Investigation under the Judicial Conduct (Magistrates) Rules 2014.

Minimum sittings

- 5.13. The Lord Chancellor accepts that magistrates are volunteers with other personal and work commitments in addition to their sittings as a magistrate. This may mean that many magistrates can often undertake no more than the minimum sitting requirement of 13 days or 26 half days a year¹. This can be a major commitment on their part and can contribute to a diverse make-up of the bench.
- 5.14. The overall number of magistrates' sitting days available for a local area will be determined by workload at the court, and available resources, not

¹ Magistrates will normally be asked to sit full day sessions rather than half days, to simplify the management of the court. Magistrates may ask to sit half days if necessary to enable them to meet their minimum sitting requirement and this should be accommodated.

the need to maintain magistrates' sittings.

- 5.15 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.
- 5.16 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.
- 5.17 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.
- 5.18 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

- 5.19 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.
- 5.20 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

- 5.21 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.
- 5.22 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.
- 5.23 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

5.24 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 with the expectation that most 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).

Attendance

5.25 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 to fill any remaining sittings.

5.26 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. Ordinarily, magistrates are expected to sit at monthly intervals so that those able to sit no more than the minimum of 13 days have regular experience and contact with their Bench. At times, magistrates may need to apply for a leave of absence in response to events in their lives following the process below. For those magistrates requiring more lasting reasonable adjustments to the general sitting pattern, a request should be made to their Bench Chair for dispensation and an adjusted sitting pattern.

'Out of Hours' sittings

5.27 On occasion, magistrates may be required to consider applications for search warrants and other cases outside standard business hours. HMCTS are responsible for administering and maintaining a rota system to manage such out of hours applications.

5.28 Magistrates who are eligible may opt into this rota. They should be mindful of the impact of this on their sitting requirements to ensure they do not exceed the maximum sitting requirements.

5.29 Magistrates cannot exclusively use out of hours sittings to meet the minimum sittings requirements.

5.30 The period for which the magistrate is on duty on the out of hours rota will constitute a half day's sitting when there has been no application made but the magistrate has been on standby for the duration, and 1

sitting day where the magistrate has dealt with at least 1 application in that period. However, it is important that this work is balanced with the experience gained from court sittings and a maximum of 12 sittings (6 days) will be credited towards the annual minimum sitting requirements.

Average sittings

- 5.31 If sufficient magistrates have been recruited to a Local Justice Area, the average annual attendance figure (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.
- 5.32 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.

The method of counting attendances

- 5.33 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.
- 5.34 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.
- 5.35 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.
- 5.36 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 (half-day) sitting.
- 5.37 Sittings at any of the following are counted as attendances:
- adult court (both ordinary and special sittings);

- family court;
 - youth court;
 - the Crown Court.
- 5.38 Sittings at another bench should count towards the total number of sittings by an individual magistrate.
- 5.39 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

- 5.40 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 courts, magistrates must give an undertaking that they can comply with the minimum sitting requirements.
- 5.41 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**.
- 5.42 Family Presiding Justices, 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 court (with two thirds of sittings being as the Presiding Justice).

Sitting exclusively in one jurisdiction

- 5.43 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, 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 Family Training Approvals Appraisals and Authorisation Committee / Justices Training Approvals Appraisals and Authorisation Committee.

5.44 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 Family Training Approvals Appraisals and Authorisation Committee / Justices Training Approvals Appraisals and Authorisation Committee require.

Leave of absence

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

Absences up to 18 months

- 5.46 Bench Chairs may approve a leave of absence up to 12 months. In handling such requests:
- Advisory Committees must be notified of the approved request.
 - Periods of absence must be reviewed by Bench Chairs every three months.
 - Advisory Committees must record the absence on the central database used by Judicial Office HR.
 - Bench Chairs have discretion to refer any leave of absence issues to the Advisory Committee.
 - Where an application for a leave of absence would take the magistrate beyond the 12-month limit in a 24-month period, the Bench Chair must refer the magistrate to the Advisory Committee.
- 5.47 Judicial Office HR may approve a leave of absence of more than 12 months in a 24-month period. In handling such requests:
- The Advisory Committee must refer the application with their recommendation to Judicial Office HR.
 - Where Judicial Office HR approves the application, the Advisory Committee must notify the Bench Chair.
 - It is unlikely that a leave of absence of more than 18 months will be granted.
- 5.48 A leave of absence is not required where the absence is due to illness. In these circumstances:
- The Advisory Committee must monitor the absence.
 - Advisory Committees must record the absence on the central database used by Judicial Office HR.
 - If the absence exceeds 18 months, Bench Chairs must discuss with the magistrate whether entry in the Supplemental List is more appropriate.
- 5.49 A leave of absence is not required when the absence is due to

pregnancy (up to 52 weeks). In these circumstances:

- The magistrate should inform the Bench Chair, Advisory Committee Secretary and Head of Legal Operations of their intention to take leave as early as possible.
- Advisory Committees must record the absence on the central database used by Judicial Office HR.

5.50 A leave of absence is not required where the absence is for personal reasons. In these circumstances:

- This applies to situations where a magistrate refrains from sitting because of, for example, involvement in court proceedings, financial difficulties or the conduct of relatives or friends.
- Advisory Committees must record the absence on the central database used by Judicial Office HR.
- Bench Chairs should monitor the absence and report the absence to the Advisory Committee when the period of absence exceeds 12 months.

5.51 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.

Absences for longer than 18 months

5.52 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.

5.53 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.

5.54 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.

5.55 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.

5.56 Where a magistrate returns to sitting after a long absence, the Chair of the Family Training Approvals Appraisals and Authorisation Committee / Justices Training Approvals Appraisals and Authorisation Committee

should be notified so that the magistrate is supported on their return.

General provisions

- 5.57 The Lord Chief Justice has delegated his statutory authority to reassign magistrates to a different Local Justice Area to the Senior Presiding Judge.
- 5.58 Where parts of this process require referral to the Senior Presiding Judge or consultation with the Lord Chancellor, Judicial Office HR will facilitate that process.
- 5.59 Magistrates have no automatic right to transfer to another Local Justice Area. They are generally expected to either live or work close to the Local Justice Area they are assigned to. Applications should generally be granted unless there are sound reasons to refuse them (see 'Reasons to refuse' below).
- 5.60 Magistrates are generally, on being appointed, assigned by the Lord Chief Justice to a Local Justice Area close to where they live or work. Magistrates whose circumstances change so that they no longer live or work in or close to the LJA to which they are assigned will generally be expected to apply for transfer to their new area. Magistrates in this position who do not wish to apply for transfer without good reason should resign, and may seek transfer to the Supplemental List. Examples of acceptable reasons for not seeking transfer to another LJA include:
- That the magistrate is ineligible to serve in that LJA because of their occupation or that of a close family member.
 - That there is an approved moratorium on accepting transfers into the LJA to which they should seek transfer.
 - That the magistrate is within 12 months of the statutory retirement age.
 - That the Bench Chair and HOLO agrees that it would be reasonable for the magistrate to continue to serve in that area.

The transfer process

- 5.61 The transfer process is outlined below:
- Magistrate completes application form (**Appendix 5A**) and sends to the Advisory Committee Secretary. The Secretary acknowledges receipt of the application.
 - The Secretary refers application to Bench Chair and requests a reference.
 - Bench Chair considers application and, providing there are no grounds to refuse a transfer, provides a reference using Bench Chair's form (**Appendix 5B**) and sends to Advisory Committee Secretary, with a copy provided to the applicant magistrate.
 - The Secretary acknowledges receipt and processes application (or

passes to relevant counterpart if transfer destination is in a different Advisory Committee area with a different Secretary).

- Receiving Secretary forwards application, Bench Chair reference and training record to receiving Bench Chair for consideration.
- If destination area is fully subscribed, the magistrate should be asked to take a leave of absence should they not be able to fulfil their minimum sitting requirements.
- If the receiving Bench Chair recommends acceptance of the application to transfer, the receiving Secretary should be notified of the recommendation using the standard form (**Appendix 5C**). The receiving Secretary informs Judicial Office HR, who will pass the matter to the Senior Presiding Judge for consideration and if appropriate will normally approve the proposal on behalf of the Lord Chancellor.
- If the receiving Bench Chair recommends refusal of the application, the receiving Secretary should be notified of the recommendation using the standard form (**Appendix 5C**). The Secretary should inform Judicial Office HR, who will pass the matter to the Senior Presiding Judge for consideration. Then the magistrate will be informed of the decision made by the Senior Presiding Judge.
- Receiving Bench Chair arranges introductory meeting with the magistrate. Chair of the Family Training Approvals, Appraisals and Authorisation Committee / Justices Training Approvals, Appraisals and Authorisation Committee may also attend this meeting to discuss any training needs. Bench Chairs should complete the checklist (**Appendix 5D**) as a record of the discussion.

Procedure where a Local Justice Area is fully subscribed

5.62 A Local Justice Area should be regarded as fully subscribed if:

- Average sittings for the bench are below 20 sittings days² per year; and
- It is envisaged that accepting any transfers within the following 12 months would prevent magistrates from meeting minimum sitting requirements.

5.63 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.

5.64 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

² A “sitting day” equates to two half sittings.

compelled to apply to join the Supplemental List.

- 5.65 Magistrates must complete any necessary training as directed by the local Family Training Approvals, Appraisals and Authorisation Committee / Justices Training Approvals, Appraisals and Authorisation Committee 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

- 5.66 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 any moratorium, the Senior Presiding Judge can be asked for permission to extend the moratorium for up to a further 12 months.
- 5.67 Judicial Office HR should be contacted for advice on the formulation of requests to introduce, or extend, a moratorium and will facilitate this process on behalf of the Senior Presiding Judge.

Reassignment in the interests of the administration of justice

- 5.68 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.
- 5.69 This authority rests solely with the Senior Presiding Judge following consultation with the Lord Chancellor and would be exercised only after very careful consideration.
- 5.70 This power is not delegated to Bench Chairs.

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

- 5.71 The expectation is that magistrates will be requesting a transfer to an area in which they either live or work to maintain the principle of local justice.
- 5.72 Magistrates must have received their threshold appraisal prior to requesting a transfer, except where there has been a significant change in circumstances since appointment.
- 5.73 Applications by magistrates disqualified from sitting at their desired destination by factors set out in Part 2 of these Directions, such as occupation, must be refused. Where disqualification is not absolute and depends on the specific circumstances, the Bench Chair should make a recommendation with the concurrence of the Advisory Committee. If agreement cannot be reached, the matter should be referred to Judicial

Office HR, who will seek direction from the Senior Presiding Judge.

- 5.74 Applications from magistrates who are, or who become, involved in conduct proceedings must be held in abeyance for processing until the proceedings are concluded.
- 5.75 Where a magistrate has been subject to formal disciplinary sanction following conduct proceedings, this does not justify rejecting their application.

The Supplemental List

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

General

- 5.77 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.
- 5.78 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; and
 - to ease the process of return to the active list in situations where magistrates have been temporarily transferred from that list.
- 5.79 Magistrates 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

- 5.80 A magistrate who has reached the statutory retirement age must have their name entered in the supplemental list, except in the following circumstance:
- A magistrate who is, or is expected to be, exercising functions in proceedings on their 75th 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 Office HR when such situations arise (giving as much notice as possible) and Judicial Office HR will seek a direction from the Lord Chief Justice and the Lord Chancellor.

Entry in the supplemental list upon leaving the active list

- 5.81 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.

- 5.82 The Advisory Committee should consider 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.
- 5.83 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 Family Training Approvals, Appraisals and Authorisation Committee / Justices Training Approvals, Appraisals and Authorisation Committee before making their recommendations on the application.
- 5.84 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.
- 5.85 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 the reasons for not doing so.
- 5.86 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

- 5.87 Magistrates on the Supplemental List cannot perform any acts of a Justice of the Peace.
- 5.88 Magistrates on the Supplemental List may use the suffix 'JP' after their name but must follow the same guidance set out for active magistrates (see the *Useful information for Magistrates* booklet).
- 5.89 Magistrates on the Supplemental List must inform the Advisory Committee Secretary for their existing area if they change address. The Secretary must inform Judicial Office HR so e-HR records can be updated. 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.

- 5.90 Magistrates will be sent a letter by Judicial Office HR with a note explaining what being on the Supplemental List means.

Complaints about Supplemental List magistrates

- 5.91 If an Advisory Committee receives a particularised complaint about the conduct of behaviour of a magistrate on the Supplemental List, the complaint, if appropriate, should be investigated by the Advisory Committee in line with the process contained in the Judicial Conduct (Magistrates) Rules 2014.

Resignation, moves from active list, retirement and death

Resignations

- 5.92 A magistrate may, at any time, resign from judicial office.
- 5.93 Magistrates who resign from judicial office 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.
- 5.94 Where a magistrate wishes to resign from judicial office, they should notify the Secretary of this. The Secretary should inform Judicial Office HR Operations who will then amend E-HR to reflect the effective date of resignation and advise Judicial Office HR. Judicial Office HR will issue the appropriate letter to the magistrate.
- 5.95 Where a magistrate notifies the Secretary of their intention to move from the Active List (i.e. Resign) and the magistrate has not applied for their name to be entered onto the Supplemental List, the Advisory Committee should consider whether a move to the Supplemental List is more appropriate than resignation.
- 5.96 If the Committee consider the magistrate suitable for entry to the Supplemental List, this should be relayed to the Secretary 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 Secretary should advise Judicial Office HR, who will send the request to the Lord Chancellor for consideration. Judicial Office HR will process in accordance with the Lord Chancellor's decision and will inform the Secretary.
- 5.97 Where Advisory Committees do not consider that a magistrate is suitable to be entered onto the Supplemental List, the Advisory Committee Secretary will inform Judicial Office HR. Judicial Office HR will issue the appropriate letter to the magistrate confirming their resignation from judicial office.

Voluntary moves from the Active List

- 5.98 A magistrate may, at any time, request a move from the Active List and for their name to be entered in the Supplemental List.
- 5.99 Where a magistrate notifies the Secretary 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 Secretary should inform Judicial Office 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 of their right to have their application considered by the Lord Chancellor. If a magistrate wishes for their application to be considered by the Lord Chancellor, this request should be relayed to Judicial Office HR along with the Advisory Committee's concerns. Judicial Office HR will obtain the Lord Chancellor's decision.

Retirement

- 5.100 Three months before a magistrate reaches their 75th birthday, Judicial Office HR will write to the Advisory Committee Secretary to confirm the date of retirement from the Active List.
- 5.101 The Secretary should notify Judicial Office HR as soon as possible of any exceptional circumstances and of any personal matters which might affect the wording of the retirement letter.
- 5.102 Officials in Judicial Office HR will prepare a retirement letter to be sent from the Senior Presiding Judge, which will be despatched on or about the date of retirement.

Voluntary Retirement

- 5.103 A magistrate may, having satisfactorily served a minimum of five years, choose to voluntarily retire from the Active List at age 70 or older.
- 5.104 Any magistrate seeking to voluntarily retire should write to the Advisory Committee Secretary indicating their desire to do so. This should be done a minimum of three months before the date on which they wish to retire, though ideally giving as much notice as possible.
- 5.105 The Secretary should notify Judicial Office HR who will prepare a retirement letter to be sent from the Senior Presiding Judge.
- 5.106 The Advisory Committee will assess, in the process set out above regarding entry to the Supplemental List upon leaving the Active List, whether to recommend the voluntarily retiring magistrate for addition to the Supplemental List.
- 5.107 In the absence of any conduct, attendance, or disciplinary concerns from the Advisory Committee, the presumption is that voluntarily retiring magistrates will be added to the Supplemental List upon their retirement, subject to the sign-off of the Lord Chancellor.
- 5.108 In cases where magistrates have been subject to disciplinary action for

misconduct within the past five years, the magistrate will not be recommended for voluntary retirement and will be expected to resign. The magistrate will neither be added to the Supplemental List nor receive a retirement letter from the Senior Presiding Judge.

- 5.109 Where a voluntarily retiring magistrate is not added to the Supplemental List, the Secretary should inform the magistrate in writing, giving reasons for the Committee's decision. It would then be open to the magistrate concerned to apply to the Lord Chancellor to reconsider the matter.
- 5.110 Voluntary retirement from the magistracy should only be taken where a magistrate has no intention of returning to the bench. Reinstatement from the Supplemental List to the Active List of voluntarily retired magistrates will not be allowed other than in exceptional circumstances, as set below regarding magistrates in the Supplemental List.

Death in Service

- 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 If an Advisory Committee Secretary becomes aware of the death of a Supplemental List magistrate, they must report it to the Judicial Office HR Team.
- 5.113 A letter of condolence will not normally be sent to the next of kin of a magistrate on 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 the Supplemental List), then the Secretary should inform Judicial Official HR accordingly.
- 5.114 Where a letter of condolence is to be sent, officials in Judicial Office HR will prepare the appropriate letter to be sent from the Senior Presiding Judge.

Re-appointments and re-instatements

- 5.115 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 statutory retirement age and have not exercised the option of voluntary retirement).
- 5.116 The Public Sector Pensions and Judicial Offices Act 2022 increased the statutory retirement age for all judicial office holders, including magistrates, to 75. Magistrates who were on the Supplemental List and were over 70 but under 75 at the date of Royal Assent (10 March 2022) were offered a chance to apply for reinstatement via a one-off process.

Where the magistrate resigned and is not on the Supplemental List

- 5.117 Former magistrates who wish to return to the magistracy who are not on the Supplemental List and resigned less than 24 months previously, should complete **Appendix 5E** for consideration by the Advisory Committee.
- 5.118 The general expectation is that, provided they resigned less than 24 months ago, former magistrates will not need to provide referees or go through the formal interview process. However, they will need to complete **Appendix 5E**, so that an up-to date written record is available once they have been reinstated.
- 5.119 Former magistrates who resigned more than two years prior to the current application should be treated as new applicants and must complete a full application form.
- 5.120 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.
- 5.121 While it is not necessary for the former magistrate to provide external referees, the Advisory Committee Secretary must send the standard reference form (**Appendix 5B**) to the former magistrate's previous Advisory Committee to obtain a reference from the chair of their former bench.
- 5.122 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.
- 5.123 All recommendations for re-appointment should be submitted to Judicial Office HR for approval by the Lord Chancellor and the Lord Chief Justice.

Magistrates in the Supplemental List

- 5.124 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. Magistrates wishing to return to the Active List must complete the standard application form (Appendix 5E) to assist with these discussions. If such a meeting takes place, a minute of the meeting should be taken.
- 5.125 The general expectation is that, provided there have been no substantial changes in their circumstances and this is confirmed in writing, magistrates on the Supplemental List may be 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.

- 5.126 While it is not necessary for the magistrate to provide external referees, where the magistrate is seeking to be reinstated to a different area in which they sat when they entered the Supplemental List, the Conduct Advisory Committee Secretary should, where sufficient information is held, send the standard reference form (**Appendix 5B**) to the magistrate's previous Advisory Committee to obtain a reference from the former Bench Chair.
- 5.127 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.
- 5.128 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
- 5.129 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.
- 5.130 Magistrates who have taken voluntary retirement from the Active List and been added to the Supplementary List should only be reinstated in exceptional circumstances.

Disclosure and Barring Service checks

- 5.131 Former magistrates and those in the Supplemental List who are selected for reinstatement 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 Office HR.

Procedure after reinstatement or return to the Active List

- 5.132 A magistrate who is recommended for return to the Active List should complete a new declaration and undertaking form (**Appendix 4C**).
- 5.133 There is no need for magistrates to take the Oath of Allegiance or the Judicial Oath again on reinstatement.
- 5.134 Reinstated magistrates or those returning to the Active List from the Supplemental List must undertake any training recommended by the Chair of the Family Training Approvals, Appraisals and Authorisation Committee / Justices Training Approvals, Appraisals and Authorisation Committee.

- 5.135 Following reinstatement 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 Family Training Approvals, Appraisals and Authorisation Committee / Justices Training Approvals, Appraisals and Authorisation Committee 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. Bench Chairs must complete **Appendix 5D** as a record of the discussion.

Updating personal information

- 5.136 Advisory Committee support teams must update records 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.
- 5.137 In the event of there being a need to contact magistrates on the Supplemental List, HMCTS will use these details to contact individuals if and as required.