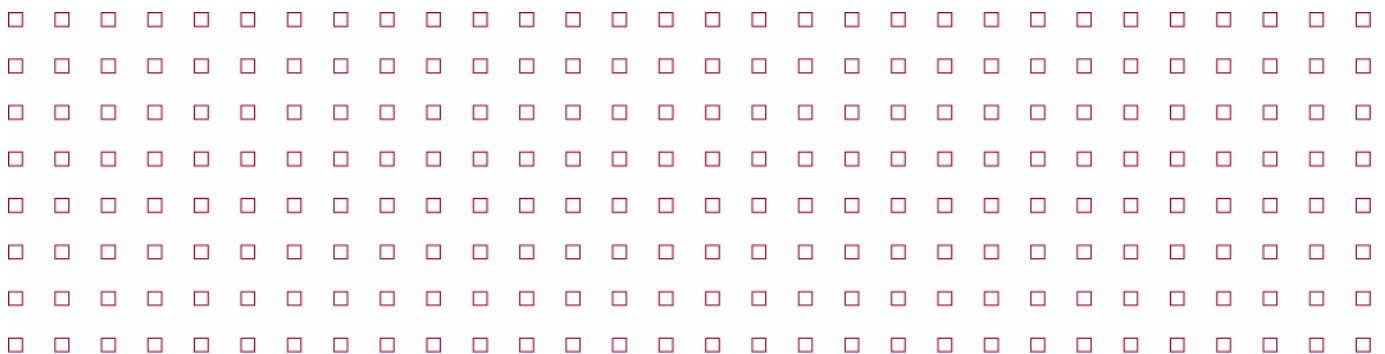




Reasonable Adjustments Policy for Judicial Office Holders

August 2008





Ministry of
JUSTICE

Reasonable Adjustments Policy for Judicial Office Holders

**This information is also available on the Ministry of Justice website:
www.justice.gov.uk**

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1. The Ministry of Justice's approach

The Ministry of Justice (MoJ) is committed to ensuring equality for people with disabilities (as defined by the Disability Discrimination Acts 1995 and 2005) that apply for judicial appointment, for new appointees who have a disability, and for serving judicial office holders who have or acquire them.

We will promote a positive approach to disability and reasonable adjustment for applicants for judicial office and judicial office holders (including Justices of the Peace and General Commissioners of Income Tax) throughout the courts and tribunals and other organisations within the MoJ family.

This policy statement sets out our broad approach to issues of reasonable adjustment for applicants with disabilities for judicial office and judicial office holders. It also explains what systems are in place within the MoJ, the Judicial Office, the Judicial Studies Board and the courts and tribunals to ensure that judicial office holders with disabilities are treated fairly and consistently.

This document is only a high-level policy statement and **does not** set out to provide:

- details of the employment provisions of the Disability Discrimination Acts (DDA)
- a definition of disability under the DDA
- a definition of what constitutes a 'reasonable' adjustment
- an explanation of the type of workplace assessments that might be required by judicial office holders
- a comprehensive list of examples of the type of adjustments and support which might be requested
- guidance on the adjustments required in respect of particular disabilities.

This information can be found in the MoJ's Ability Manual, although it should be noted that the manual currently only applies to staff. It does however contain helpful and practical guidance on providing reasonable adjustments. Staff may also wish to refer to the former Disability Rights Commission's (DRC) (now the Equality and Human Rights Commission) Code of Practice on Employment and Occupations, which provides definitive guidance on reasonable adjustments and highlights the availability of specialist information from disability organisations. The Departmental Disability Adviser, who is based in Equality, Diversity and Human Rights Division, can also be contacted for assistance and guidance.

This policy statement, and contact details for the former DCA's Disability Network, will be made available on the MoJ website and in judicial appointment application material. A copy will also be provided to every judicial office holder, whether salaried, fee-paid or voluntary, on appointment.

2. Applicants for judicial office

The selection process

Since 3 April 2006, the Judicial Appointments Commission (JAC) has been responsible for selecting candidates for judicial appointments in England and Wales. The Commission is under a statutory duty, in performing its functions, to have 'regard to the need to encourage diversity in the range of people available for selection for judicial office'. In relation to applicants with disabilities, the Commission is also subject to requirements in relation to the appointment of office holders under the Disability Discrimination Acts 1995 and 2005.

The JAC welcomes its general and specific disability equality duties and recognises the importance of the requirement to have due regard to the need to 'encourage participation by disabled people in public life'. The JAC has a process formulated in consultation with the Departmental Disability Adviser, in place to allow applicants to request reasonable adjustments, which is set out in the application pack.

Applicants are able to request adjustments for the interview, assessment centre and all stages of the selection process. The application pack provides details of a contact that is independent from the selection exercise team and can be contacted by applicants in confidence. The contact will discuss with the applicant their particular needs and ensure all reasonable adjustments are made to enable them to take part at every stage of the selection process. The same approach applies to the MoJ, Judicial Office and to the Lord Chancellor's Advisory Committees on Justices of the Peace in respect of the selection process for those appointments, which have not been transferred to the JAC.

3. Requests for reasonable adjustments

New appointments – office holders other than Justices of the Peace and General Commissioners of Income Tax

Once the Lord Chancellor has approved candidates for appointment to judicial office or for recommendation to the Queen, the JAC will inform the MoJ Judicial Policy and Appointments Division of the candidate's contact information so they may begin a separate reasonable adjustment process. The MoJ Judicial Policy and Appointments Division will write to the candidates informing them that they have been recommended for appointment (for salaried posts this will follow the successful completion of the required medical examination). The letter will ask candidates whether they have disabilities as defined by the DDA, whether they require reasonable adjustments and if so, what these are. Candidates will be expected to reply as promptly as possible. If any post selection medical assessment conducted by the JAC indicated that a candidate might require reasonable adjustments, that candidate will be specifically invited to contact the Post Appointments Team.

If a candidate requires a workplace assessment, the MoJ Judicial Policy and Appointments Division will contact the appropriate Regional Director or Tribunal Manager and the appropriate Health and Safety Team (ie if a court appointment the HMCS Security and Safety Team, if a Tribunals Appointment, the Tribunal Health and Safety Team). Once the Health and Safety Team have sufficient information about a candidate's disability they will make a referral to our assessment providers (ATOS). Depending on the nature of the disability the candidate will be assessed by either an Occupational Health Advisor (OHA) or an Occupational Therapist (OT). The assessment report and recommendations will be passed to the appropriate Health and Safety Team who will liaise with MoJ Judicial Policy and Appointments Division. MoJ Judicial Policy and Appointments Division in conjunction with relevant HMCS/Tribunal Service/Judicial Office officials will consider whether any required adjustment is reasonable.

(See section 4 below for further details on where responsibility for determination lies and the process for considering adjustments.)

On appointment, the MoJ Judicial Policy and Appointments Division will provide a copy of information about reasonable adjustments to the Judicial Office to be placed on the office holder's Judicial HR paper file and to the Regional Director/Tribunal Manager.

When a new appointee takes up post, the MoJ Judicial Policy and Appointments Division will liaise with the Judicial Studies Board about any known reasonable adjustments needed for initial training. A Standard Display Screen Equipment (DSE) assessment will be arranged by the appropriate Tribunal Service/HMCS manager/managers for all new appointees.

New appointments – Justices of the Peace and General Commissioners of Income Tax

Where a newly appointed Justice of the Peace or General Commissioner may require a reasonable adjustment, the Advisory Committee will contact the HMCS manager at the court at which it is proposed the magistrate should sit – or, in the case of a General Commissioner, the appropriate tribunal manager – so that the necessary adjustments can be considered. They will then contact the HMCS Security and Safety Team in order to process the assessment.

Serving judicial office holders

If a serving judicial office holder (whether salaried, fee-paid or unpaid) considers there may be a possibility that he or she requires a reasonable adjustment, he or she may raise the issue with an appropriate official such as the relevant court or tribunal manager, Area Director or Regional Director or with the Judicial Office – Judicial Health and Welfare Branch. If the office holder requires a workplace assessment, the relevant official will contact the appropriate Health and Safety Team.

Once the Health and Safety Team have sufficient information about an office holder's impairment they will make a referral to our assessment providers (ATOS). Depending on the nature of the impairment the candidate will be assessed by either an Occupational Health Adviser (OHA) or an Occupational Therapist (OT). The assessment report and recommendations will be passed to the appropriate Health and Safety Team who will then liaise with the relevant HMCS/Tribunal Service/Judicial Office officials. The judicial office holders will also be supplied with a copy of the report and invited to make comments.

4. Consideration of adjustments

The process for consideration

An indicative list of the type of adjustments that might be requested is set out in the MoJ Ability Manual. Standard adjustments that may be requested include:

- adjustments to working arrangements (including the nature of the judicial office concerned)
- adjustments to the working environment
- the provision of specialised equipment.

Who will consider a request for an adjustment?

Consideration of whether an adjustment requested is reasonable will be led and coordinated by the appropriate MoJ/HMCS/Tribunal Service/Judicial Office official, and this will depend on the nature of the adjustment requested. For example:

- a request for a structural change to a court building will be a matter for the relevant court/Tribunal Managers or Area/Regional/Estates Directors
- a request for a change to working hours (and other deployment issues) will be a matter for the senior judiciary and the Judicial Office, in consultation with the HMCS
- a request for a special pay allowance will be a matter for MoJ Judicial Policy and Appointments Division.

There may be occasions when a judge requires a multiplicity of different adjustments and it will be incumbent on a number of parties to determine the reasonableness of each aspect of the request.

Reasonable adjustment policy

Consideration of adjustments may therefore involve a combination of some of the following:

- the relevant court or Tribunal Manager
- the relevant Area Director
- the relevant Regional Director or Tribunal Service Director
- the relevant Tribunal President and/or Regional Chair
- the resident judge or similar senior local judicial officer
- the relevant Regional Diversity Manager or equivalent
- the bench chairmen
- the relevant justices' clerk
- the Regional Judicial Secretariat
- the MoJ Judicial Policy and Appointments Division
- the Judicial Office
- the Chief Magistrate's Support Team within the Judicial Office
- Relevant members of HMCS or Tribunal Service staff
- Access to Justice Estates Branch
- HR officers – disability specialists
- the Ministry's Disability Adviser
- external experts
- legal advisers.

The MoJ Ability Manual provides useful guidance on which officials and parts of the department will need to be engaged for different types of reasonable adjustment requests. Whatever the nature of the adjustment requested, the Judicial Office will be informed of all requests for adjustment and the outcome of these requests. This will allow the Judicial Office to become a central repository of information on reasonable adjustments. In line with the treatment of all information disclosed during the judicial appointment process, that on reasonable adjustments remains confidential.

Considering reasonableness

Determining officers will consider reasonableness on a case-by-case basis but will take account of the general guidance on reasonableness set out in the MoJ's Ability Manual and the former DRC's Code of Practice. Consideration may have to be given to the effectiveness of a requested adjustment in preventing disadvantage, the practicality of making an adjustment and the resource implications of an adjustment. Other more specific factors may also be relevant such as the demands of the particular judicial office and the business needs of the court or tribunal in which the judicial post is or would be based. Legal advice may be required in some cases.

A timetable for completing the process and implementing the outcome will be agreed in each case. The applicant or judicial office holder will be kept informed of the progress of the consideration and given an opportunity to make representations before it is concluded.

Determination

The applicant or judicial office holder will be informed of the determination of the request for an adjustment by the appropriate coordinating official. In the case of new appointments, the determination will be communicated to the candidate by the MoJ Judicial Policy and Appointments Division. No applicant or judicial office holder will be asked to fund reasonable adjustments personally.

Refusal to provide adjustments

Before any determination is made that an adjustment requested by a successful applicant or serving judicial office holder is not 'reasonable' on grounds of practicability, business need, cost or for any other reason, legal advice will be sought by the appropriate coordinating official. Should legal advice support the decision to refuse to provide an adjustment, the Judicial Office will also be informed, before the decision is communicated to the applicant or judicial office holder. For serving judicial office holders the grounds upon which an adjustment is refused will be set out in writing by the appropriate coordinating official and by the MoJ Judicial Policy and Appointments Division for new applicants.

Serving judicial office holders

Serving judicial office holders may make an appeal against a decision not to provide reasonable adjustments. Office holders with a grievance about the decision received on a request for reasonable adjustments should at first seek to resolve the issue at a local level – for example by making contact with the relevant appropriate official such as the court, tribunal or area manager.

It is preferable that any grievance is resolved informally and at the most local level possible. If a resolution is not possible, the office holder should make a formal complaint in writing to the MoJ Judicial Policy and Appointments Division. The MoJ Judicial Policy and Appointments Division will identify a relevant senior official/officials within the MoJ to investigate and determine the complaint. The outcome of the review will be sent to the Director General of MoJ's Democracy, Constitution and Law Group. The MoJ Judicial Policy and Appointments Division will ensure that a formal response is made to the individual raising the grievance.

Office holders may appeal in writing, within 28 days of receiving the decision, setting out the full reasons for making the appeal. Grounds for appeal may include:

- proper procedures not being followed
- the investigating official failing to consider all of the evidence
- specific evidence not being given sufficient weight.

In the event of such an appeal the Director General of the Democracy, Constitution and Law Group, or a person identified by him/her will determine the appeal. The Director General of the MoJ's Democracy, Constitution and Law Group will arrange for the Lord Chancellor and the Lord Chief Justice to be informed of the outcome. The MoJ Judicial Policy and Appointments Division will ensure a formal response is made to the individual making the appeal.

Candidates who have been approved by the Lord Chancellor but have not yet taken up office

There may be rare circumstances in which an applicant has been recommended by the JAC, approved by the Lord Chancellor but then informed that they cannot take up office as the adjustments they require to fulfil the post are not reasonable. For candidates with such a grievance it will not be possible to resolve the grievance at a local and informal level. Appointees should, in the first instance, make a formal grievance complaint in writing to MoJ Judicial Policy and Appointments Division. The MoJ Judicial Policy and Appointments Division will identify a relevant senior official/officials at SCS level to investigate and determine the complaint. The outcome of the review will be communicated to the Director General of the Democracy, Constitution and Law Group and reported to the Lord Chancellor. The MoJ Judicial Policy and Appointments Division will ensure that a formal response is made, within a reasonable timeframe, to the individual raising the grievance.

Candidates may appeal within 28 days of receiving the decision, setting out the full reasons for making the appeal. Grounds for appeal may include:

- proper procedures not being followed
- the investigating official failing to consider all of the evidence
- specific evidence not being given sufficient weight.

In the event of such an appeal the Director General of the Democracy, Constitution and Law Group, or a person identified by him/her will determine the appeal. The Director General of the MoJ's Democracy, Constitution and Law Group will arrange for the Lord Chancellor and the Lord Chief Justice to be informed of the outcome. The MoJ Judicial Policy and Appointments Division will ensure a formal response is made to the individual making the appeal.

Review of reasonable adjustments

A judicial office holder may request a review of reasonable adjustments at any time by contacting an appropriate official as set out in section 3.

Retiring judicial office holders

On leaving office, former judicial office holders should alert the appropriate official if they are in possession of any specialist equipment provided as part of a reasonable adjustment and discuss whether it needs to be returned.

5. The Judicial Work-Shadowing Scheme

Materials advertising the Judicial Work-Shadowing Scheme will offer reasonable adjustments to potential applicants for judicial office who wish to take up the opportunity the scheme offers. If an applicant for the scheme asks for adjustments, the contact within the Judicial Secretariat or the local Judicial Work-Shadowing Liaison Officer for the court or tribunal to which the application is sent will contact the applicant to discuss the request and consult relevant HMCS staff. Both the applicant and the judicial office holder designated to be shadowed will be consulted as part of this process.

6. Judicial Studies Board and judicial training

The Judicial Studies Board has policies and procedures in place to ensure that reasonable adjustments for those who require them are made during the training process. The MoJ Judicial Policy and Appointments Division will inform the JSB of any reasonable adjustments required for new appointees. Serving judicial office holders should inform the course organiser of the required adjustments at the earliest opportunity.

7. Review and evaluation

The first consultation on this policy was carried out between February and April 2008.

The policy will be reviewed annually to ensure it remains fit for purpose.

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