



Ministry  
of Justice

The Right Honourable  
**Elizabeth Truss MP**  
Lord Chancellor & Secretary  
of State for Justice

The Rt Hon Peter Riddell CBE  
Commissioner for Public Appointments  
G/7  
1 Horse Guards Road  
London  
SW1A 2HQ

Chris Skidmore MP  
Parliamentary Secretary  
Cabinet Office  
70 Whitehall  
London  
SW1A 2AS

05 December 2016

Dear Peter and Chis

#### MINISTRY OF JUSTICE PUBLIC APPOINTMENTS

I refer to paragraph 3.1 of the new Public Appointments Governance Code and the requirement that Ministers consult the Cabinet Office and the Commissioner about any delegated appointments and any exemptions from the Code. I also refer to paragraph 6.1 of the new Code that requires Ministers to agree with the Commissioner which appointments are 'significant'.

Ahead of the implementation of the new Code I wish to confirm those appointments that I propose to continue delegating to junior Ministers or officials, and the existing exemptions from the previous Code of Practice that I propose to retain plus a number of new exemptions.

These arrangements, detailed in the enclosed annex and appendix, reflect this department having over three thousand public appointees. The majority of whom are unpaid volunteers serving in observer roles or on advisory committees, with a substantial number of the remainder being fee paid appointees in operational roles. I also wish to reach agreement with you (Peter) concerning the Ministry of Justice's 'significant' appointments.

It would be helpful to have your agreement before (or very soon after) the new Code takes effect. I look forward to hearing from you.

Best wishes,

**ELIZABETH TRUSS MP**



Delegated authority

I propose to continue the delegation to officials of appointments for Independent Monitoring Board members, Prisoner and Escort Custody Service lay observers, Court of Protection visitors and Multi Agency Public Protection Arrangement lay advisors, as described in the **appendix**.

I further propose to continue the delegation to the Magistrates HR Team of appointments to the local Advisory Committees of Justices of the Peace. Magistrates are recruited by local advisory committees. There are 44 such committees in England and Wales consisting of approximately 750 members who are unpaid volunteers. Ministerial authority for making these appointments is delegated to officials in the Magistrates HR Team under the Lord Chancellor and Secretary of State's Directions for Advisory Committees on Justices of the Peace (July 2013), which states: "1.28. The Lord Chancellor appoints members of advisory committees and sub-committees with the concurrence of the Lord Chief Justice. He has delegated this function to officials on the Magistrates HR Team."

Finally concerning delegated authority, whilst I will continue to be consulted on the final appointments, I propose to continue the delegation to junior Ministers of appointments to the Civil Justice Council, the Civil, Criminal and Family Procedure Rule Committees, the Tribunal Procedure Committee, Court Examiners, Legal Aid panel members and Parole Board members. These posts are also described in the **appendix**.

Exemptions

With regard to exemptions from the new Code, I propose to continue the below standing exemptions agreed by the previous Commissioner in 2012 for the following bodies on the basis these exemptions were proportionate for these of unpaid volunteer appointments. These are:

- Advisory Committees on Justices of the Peace (ACJP)
- Independent Monitoring Boards (IMB) members
- Multi Agency Public Protection Arrangements (MAPPA) lay advisors
- Prisoner Escort and Custody Service (PECS) lay observers

The functions of the ACJP are described above and the others are described in the **appendix**.

Specifically, and referenced against the new Code's paragraphs, these standing exemptions are:

- Paragraph 3.6 of the Code refers to a strong presumption of a maximum two terms or a maximum of ten years tenure, whereas IMB members may serve up to five (three year) terms totalling a maximum of fifteen years. This exemption reflects the voluntary nature of these appointments and the difficulty in recruiting people within travelling distance of parts of the prisons estate.
- Linked to this, and as there are around 1,500 IMB members, I am assuming it would not be appropriate or proportionate to inform you (Peter) about every IMB reappointment beyond two terms or ten years, as required in paragraph 3.6 of the Code.
- Paragraph 5.2 of the Code stipulates that the independent member of the advisory assessment panel should be independent of the department and the body concerned, whereas the independent members of the advisory assessment panels

for IMB, PECS lay observer, MAPPA lay advisor and ACJP recruitment competitions will continue to be from the same type of body in a neighbouring area or region or from an associated agency. Utilising IMB members, PECS lay observers, MAPPA lay advisors and ACJP appointees, who have been identified as being capable of offering external challenge, to sit on neighbouring advisory assessment panels is a proportionate use of resources when recruiting for these unpaid posts.

- Paragraph 8.2 of the Code requires that details of appointees and advisory assessment panels be published. IMBs and PECS lay observers do not publish their appointee and the advisory assessment panel details for security reasons as all are volunteers working in the Criminal Justice System, and I intend to retain this exemption.

You may wish to note that the posts of chairs of IMBs, PECS lay observers and ACJP are not subject to open competition. This reflects the IMB and ACJP local chairs and PECS lay observer regional chairs already being appointees to those bodies, who are then elected as chair by local members (ACJP chairs may also be nominated by the outgoing chair). Under the old Code this arrangement was subject to a standing exemption. I do not think that the reference at paragraph 3.3 of the new Code to Ministers exceptionally appointing without a competition was meant to capture this group of appointees, and I therefore do not believe an exemption under the new Code is required for IMB, PECS lay observer and ACJP chair arrangements. Just for completeness, I should explain that MAPPA chairs were not included in the old exemption as their chairs are public servants rather than public appointees and therefore are not subject to the Code.

I also propose to agree several new standing exemptions, again taking account of the voluntary nature of IMB, PECS lay observer, MAPPA lay advisor and ACJP appointments, and providing a proportionate way of working whilst reflecting the spirit of the Code:

- The new Code at paragraph 3.1 requires that Ministers (or those they have delegated authority to) should be involved at every stage of a competition including: agreeing the advertising and the advisory assessment panel membership; suggesting potential candidates; being consulted on closing a competition; being invited to give views on candidates; being provided with a choice of appointable candidates; and having the opportunity to meet candidates. Similarly, advisory assessment panels are required at paragraph 5.3 to agree their assessment strategy with the Minister (or those they have delegated authority to). I take it that these requirements are aimed at board level appointments, and not aimed at the hundreds of IMB, PECS lay observer, MAPPA lay advisor and ACJP appointments undertaken annually across the country and monitored by officials. I therefore intend to agree an exemption from these aspects of the new Code for IMB, PECS lay observer, MAPPA lay advisor and ACJP appointments.
- The new Code also requires at paragraph 5.1 that each advisory assessment panel includes a departmental official. The advisory assessment panels for IMBs, PECS lay observers and ACJP appointments are staffed by volunteers from those bodies, and it would be disproportionate to require officials to travel the country attending these interviews. I therefore intend to exempt those bodies from this requirement. The advisory assessment panels for MAPPA lay advisors are manned by public servants (albeit from several different departments) so I do not believe an exemption is required for them.

- I note that paragraph 7.8 of the new Code introduces the ideal that competitions be completed in three months. I think it highly desirable that we limit the time candidates have to wait to hear the result of their application, and for Ministry of Justice competitions run centrally we shall aim to meet this ideal. For competitions run by volunteers who only serve for two or three days a month, and have duties such as visiting prisons or courts during that time, we need to be realistic about what is achievable. Whilst I am keen that we encourage the volunteers conducting the IMB, PECS lay observer, MAPPA lay advisor and ACJP recruitment competitions to complete them as soon as possible, I do not intend to subject them to the time limit suggested in the Code.
- Finally, regarding new exemptions, the Code requires at paragraph 8.3 that real time data be published on the progress of recruitment competitions. Again, it is not appropriate or proportionate to ask the IMB, PECS lay observer, MAPPA lay advisor and ACJP volunteers to get involved in this level of reporting, and risks creating – given the volume of competitions being run – an administrative burden that may prove detrimental to recruiting more such volunteers. I therefore intend to exempt them from publishing real time data on the progress of their competitions. Of course, we will continue to advertise these posts openly and collect diversity and other data.

#### 'Significant' appointments

Regarding the Ministry of Justice's 'significant' appointments, I understand that you (Peter) have already suggested six appointments that might fall into the 'significant' category. I am content that five of these (namely HM Chief Inspectors of Prisons and of Probation, the Prisons and Probation Ombudsman and the Chairs of the Criminal Cases Review Commission and the Youth Justice Board) are categorised as 'significant'. Concerning the latter post, the youth justice landscape is evolving, but at this point and pending the outcome of the review of youth justice I am content for the Chair to be categorised this way.

I am concerned that categorising the Chair of the Judicial Appointments Commission (JAC) as 'significant' conflicts with legislation. The Judicial Appointments Commission Regulations 2013 state that the selection panel consists of three people and no more, the three being:

- The panel chair selected by the Lord Chancellor with the agreement of the Lord Chief Justice;
- The Lord Chief Justice or his representative;
- A third panel member selected by the panel chair.

Categorising the Chair of the JAC as 'significant' for Code purposes, and requiring the panel to include a Senior Independent Panel Member, not only conflicts with legislation but consequently conflicts with paragraph 7.1 of the Code (where it says recruitment processes must comply with legislation). I consider that the specific arrangements that are in place for the JAC ensure the impartiality of the panel for these appointments, and therefore it is not appropriate for this appointment to be categorised as 'significant' for the purposes of the Code.

Ministry of Justice appointments with delegated authority

**1. The following unremunerated appointments are delegated to officials:**

- Independent Monitoring Boards (IMBs)  
There are currently about 1,500 IMB members who are independent, unpaid volunteers who work an average of 2-3 days per month. Their role is to monitor the day-to-day life in their local prison, removal centre or short term holding facility and ensure that proper standards of care and decency are maintained.
- Prisoner Escort and Custody Services (PECS) Lay Observers  
There are currently 50 PECS lay observers who are independent, unpaid volunteers who check that prisoners escorted by private escort companies in England and Wales are treated decently.

**2. The following fee-paid appointments are delegated to officials:**

- Court of Protection Visitors  
There are currently 92 fee paid appointees who, on behalf of the Public Guardian or the Court, visit people who may lack mental capacity to make particular decisions and those who have formal powers to act on their behalf such as Deputies.

**3. The following unremunerated appointments are delegated to officials whilst authority for final approval of the appointment is delegated to junior Ministers:**

- Multi-Agency Public Protection Arrangements (MAPPA) Lay Advisors  
There are currently 53 unpaid volunteer lay advisers who, by reflecting the views of the community, play a critical role in MAPPA processes and express these views by attending the Strategic Management Board (SMB) meetings at quarterly intervals. The SMBs manage the processes that link agencies (including Probation, Police and Prisons) working with high risk sexual and dangerous offenders in the community. The lay advisors also play a critical role in the audit process, ensuring that public protection is delivered to the highest standard across their local area.

**4. The following unremunerated appointments are delegated to junior Ministers:**

- Civil Justice Council  
Advises on reforms to the civil justice system.
- Civil Procedure Rule Committee  
The Civil Procedure Rule Committee was set up under the Civil Procedure Act 1997 to make rules of court for the Civil Division of the Court of Appeal, the High Court and the County Court. The Civil Procedure Rules set out the practice and procedure to be followed.
- Criminal Procedure Rule Committee

The Criminal Procedure Rules govern the way criminal cases are managed, and set out the processes of the criminal courts. Whilst authority for the appointments has been delegated to a junior Minister, the Lord Chancellor has continued to conduct the formal correspondence with the Lord Chief Justice about the appointments.

- **Family Procedure Rule Committee**  
The Family Procedure Rule Committee makes rules of court that govern the practice and procedure followed in family proceedings in the High Court and family court.
- **Tribunal Procedure Committee**  
The Tribunal Procedure Committee makes rules governing the practice and procedure in the First-tier Tribunal and the Upper Tribunal.

**5. The following fee-paid appointments are delegated to junior Ministers:**

- **Court Examiners**  
A Court Examiner (barristers or solicitor-advocates with three years standing) may be assigned when a party applies for an order for a person to be examined before the hearing takes place, such as where someone is too ill to attend the trial, or where a foreign court requests evidence from a person who resides in this jurisdiction and not in the jurisdiction of the foreign court. A party may apply for a person to be examined on oath by, or to give a deposition to, a Court Examiner.
- **Legal Aid Agency: Funding and Costs Appeals Review Panel Members and Very High Cost Cases Appeals Panel Members**  
The Legal Aid Funding & Costs Appeals Panel comprises 107 solicitors and barristers who act independently from the Legal Aid Agency in deciding the outcome of appeals against refusal of funding and the assessment of claims for costs. Within this panel there are sub-panels of specialist practitioners (from among the number mentioned above) that deal with civil and criminal high cost appeals.
- **Parole Board Members**  
Members protect the public by risk assessing prisoners to decide whether they can be safely released into the community. There are over 200 fee paid members when the Board is at full strength.

