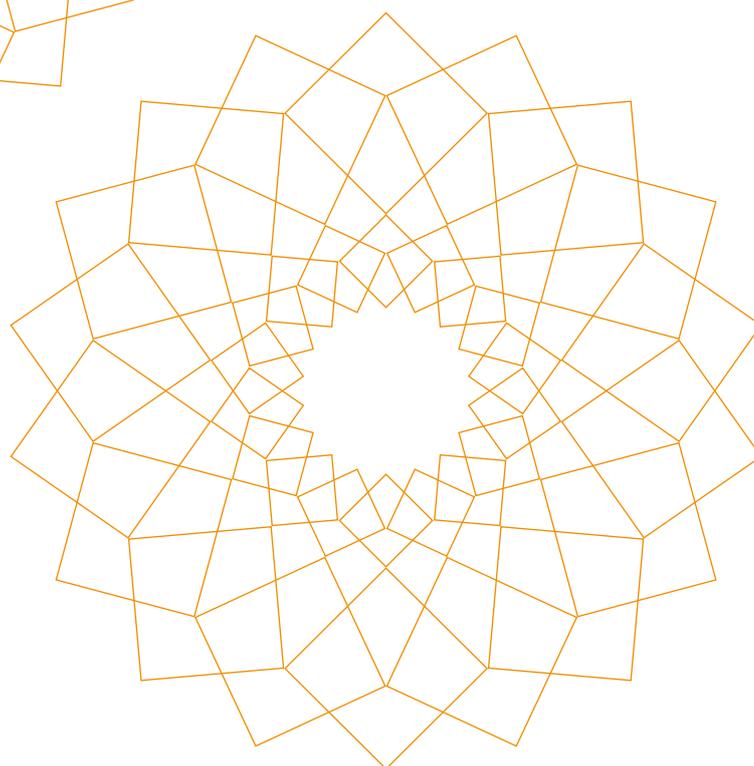
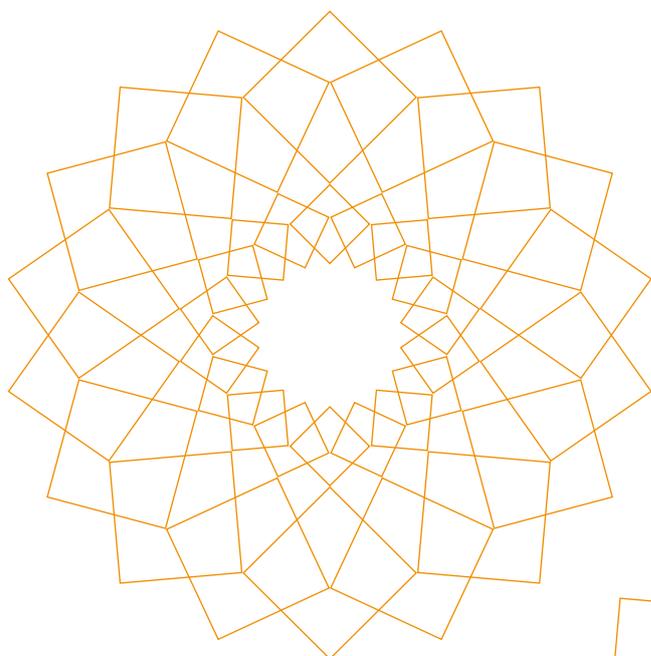




Ministry of
JUSTICE

**Reasonable Adjustments Policy for
Disabled Judicial Office Holders
May 2011**



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

1 The Ministry of Justice's approach

1.1 The Ministry of Justice's policy

The Ministry of Justice¹ (MoJ) is committed to ensuring equality for disabled people (as defined by the Equality Act 2010²) who apply for judicial appointment, for new appointees who are disabled, and for serving judicial office holders who become disabled.

The MoJ promotes a positive approach to disability and reasonable adjustment for disabled applicants for judicial office, and disabled judicial office holders (including Justices of the Peace) throughout the courts and tribunals and other organisations across the MoJ.

This policy covers all judicial appointments for which the MoJ is either directly or indirectly responsible, including legally qualified, lay or specialist appointments. It describes at a high level, the approach taken at each stage of an officeholder's career.

1.2 The aim of this document

This document is a high-level policy statement and therefore does not provide an exhaustive explanation of the issues concerning reasonable adjustments or how the process will be managed. The information contained within this statement will be supplemented by more detailed publications produced by the bodies responsible for oversight of a particular stage of the process, i.e. the Judicial Appointments Commission (JAC) will publish details of the process covering those applying for judicial office.

The legislation (the Equality Act 2010) imposes a duty on the "relevant person" to make reasonable adjustments in relation to office-holders. Who the "relevant person" is will depend on the particular circumstances – it could be a person with power to make the appointment, or to recommend for appointment, or to set terms of appointment, or to afford access to an opportunity (for promotion, transfer, training, or any other benefit), or to terminate an appointment.

The duty to make reasonable adjustments aims to make sure that a disabled person has the same access to everything that is involved in getting and doing a job as a non-disabled person, as far as is reasonable.

The responsibility for providing the appropriate funds for reasonable adjustments rests with the relevant person or body whose duty it is to make reasonable adjustments.

To enable this policy to work effectively, disabled judicial office holders are encouraged to:

- consider the practical effects of their disability, its impact on their ability to undertake the duties of the office and whether any reasonable adjustments may be necessary, and
- be open, honest and realistic about their requirements.

This policy statement will be made available on the MoJ website, and will be referenced within judicial appointment application material. The policy is also brought to the attention of every judicial office holder, whether salaried, fee-paid or voluntary, upon their appointment.

¹www.justice.gov.uk

²http://195.99.1.70/acts/acts2010/pdf/ukpga_20100015_en.pdf

1.3 Sources of additional information

Where known, links to sources of appropriate information have been included in order to supplement this policy document. For example, the following resources will be able to provide more detailed information on disability and reasonable adjustments:

The Equality & Human Rights Commission (EHRC) provides guidance on the definition of disability under the Equality Act 2010.

- The EHRC provide examples of reasonable adjustments within the workplace, together with examples of adjustments that might be made in respect of particular disabilities³.
- Information can also be located from the EHRC Code of Practice on Employment and Occupations (<http://www.equalityhumanrights.com/advice-and-guidance/information-for-advisers/codes-of-practice/>), which provides definitive guidance on reasonable adjustments and highlights the availability of specialist information from disability organisations.

³<http://www.equalityhumanrights.com/your-rights/disability/disability-in-employment/examples-of-reasonable-adjustments-in-the-workplace/>

2 What is meant by 'Reasonable'

When deciding whether an adjustment is reasonable a relevant person can consider:

- how effective the change would be in assisting disabled people;
- its practicality;
- the cost;
- the resources and size of the organisation, and
- any safety issues.

The overall aim should be to remove any disadvantage faced by disabled people.

If making a particular adjustment would increase the risks to the health and safety of anybody, including the disabled person concerned, then the relevant person can consider this when making a decision about whether that particular adjustment or solution is reasonable.

The EHRC provides additional guidance on the issues that can be taken into consideration when determining if an adjustment is reasonable:

- What equality law means for you as an employer: when you recruit someone to work for you - http://www.equalityhumanrights.com/uploaded_files/EqualityAct/employers_recruitment.pdf
- What equality law means for you as an employer: managing workers - http://www.equalityhumanrights.com/uploaded_files/EqualityAct/employers_managing_workers.pdf

3 Applicants for judicial office

3.1 Specialist, lay and legally qualified appointments

Since 3 April 2006, the Judicial Appointments Commission⁴ (JAC) has been responsible for selecting candidates for judicial appointments in courts and tribunals in England and Wales, and for some tribunals whose jurisdiction is UK-wide.

The JAC is responsible for recommending candidates to all judicial offices listed in Schedule 14 to the Constitutional Reform Act 2005⁵ as well as to the offices of the Lord Chief Justice, Master of the Rolls, President of the Queen's Bench Division, President of the Family Division, Chancellor of the High Court, Lords Justices of Appeal and High Court Judges.

In undertaking its duty, the MoJ will expect the JAC to make reasonable adjustments for any candidate who makes a request i.e. in relation to any attendance required in support of the selection process. The JAC⁶ has enshrined this duty within their current guidance and information pack, which is available to all candidates.

The Equality Act 2010 limits the circumstances where an applicant may be asked health-related questions before being offered any work (defined as including appointment to an office). Up to this point, health related questions can only be asked to:

- establish whether a duty to make reasonable adjustments exists in relation to the selection process;
- decide whether an applicant can carry out a function that is essential ('intrinsic') to the job;
- monitor diversity in the range of people applying for work;
- take positive action to assist disabled people, and
- establish whether the applicant has a particular impairment where the work genuinely requires the office holder to have a particular impairment.

3.2 Applying to become a Magistrate

The MoJ is responsible for providing advice to Advisory Committees⁷ on matters of policy as far as disabled applicants for the lay Magistracy are concerned.

The MoJ recognises the importance of the requirement to have due regard to the need to 'encourage persons who share a relevant protected characteristic (in this case disability) to participate in public life'. The MoJ has a process in place, formulated in consultation with the Departmental Disability Adviser to allow disabled applicants to request reasonable adjustments; this is set out in the information pack, which is provided to applicants. This process is managed by the local Lord Chancellor's Advisory Committees.

The Equality Act 2010 limits the circumstances where an applicant may be asked health-related questions before being offered any work (defined as including appointment to an office). Up to this point, health-related questions can only be asked to:

- establish whether a duty to make reasonable adjustments exists in relation to the selection process;
- decide whether an applicant can carry out a function that is essential ('intrinsic') to the job;
- monitor diversity in the range of people applying for work;
- take positive action to assist disabled people, and
- establish whether the applicant has a particular impairment where the work genuinely requires the office holder to have a particular impairment.

3.3 Non JAC Appointments

For those appointments not managed by the JAC, the MoJ expects a similar process to be used.

⁴www.judicialappointments.gov.uk

⁵http://www.opsi.gov.uk/acts/acts2005/ukpga_20050004_en_1

⁶http://www.judicialappointments.gov.uk/static/documents/JAC_Reasonable_Adjustments_Policy.pdf

⁷The Lord Chancellor's Advisory Committees play an important role in the recruitment and selection of Magistrates, and in dealing with conduct and discipline issues.

4 Reasonable adjustments after appointment

Responsibility for making reasonable adjustments for serving officeholders is shared between the Lord Chief Justice or Senior President of Tribunals and the Lord Chancellor.

It is for the Lord Chief Justice or Senior President of Tribunals to decide the reasonableness of adjustments regarding working practices, and it is for the Lord Chancellor to decide the reasonableness of adjustments requiring the alteration of buildings or the provision of equipment.

Initial consideration and review of such adjustments is usually delegated, in the case of working practices, to the relevant senior judge with pastoral and deployment responsibilities, Chamber President or Bench Chair or, in the case of physical adjustments, to HM Courts and Tribunals Service (HMCTS).

4.1 New appointments – Judicial office holders

There is a process in place, formulated in consultation with the Departmental Disability Adviser, to allow disabled candidates for appointment to judicial office to request reasonable adjustments. This process commences when the candidate receives the letter informing them that they have been recommended for appointment.

The offer of appointment letter will ask candidates whether they consider themselves disabled as defined by the Equality Act 2010, and if so what reasonable adjustments they consider may assist them whilst in post, as these may differ from those provided during the selection process. Candidates will be expected to reply promptly to this request, to ensure that the process for evaluating the reasonableness of any adjustments can be completed in advance of a candidate's appointment being confirmed.

If a candidate declares that they require an adjustment to be made, then HMCTS will be advised. HMCTS will then liaise with the candidate to obtain their consent to proceed with a workplace assessment.

The Judicial College (JC) will be informed of any potential implications for training.

4.2 New appointments – Magistrates

A newly appointed Justice of the Peace, who meets the definition of a disabled person as defined within the Equality Act 2010, can request a reasonable adjustment, if they feel it might assist them. Responsibility for managing the process of considering whether any adjustment is reasonable will be managed by the Lord Chancellor's Advisory Committee.

Local Advisory Committees will consult with candidates for the magistracy in accordance with the provisions set out in the Lord Chancellor's Directions to Advisory Committees on Justices of the Peace. The Lord Chancellor's Advisory Committee will then, in conjunction with relevant officials, consider whether any proposed adjustment is reasonable.

4.3 Serving disabled office holders

Serving disabled judicial office holders (whether salaried, fee-paid or voluntary), who meet the definition of a disabled person as defined within the Equality Act 2010, who consider that adjustments may enable them to carry out their duties, should seek a workplace assessment to decide whether and what adjustments need to be made.

Local Health and Safety representatives will provide advice and make the necessary arrangements and ensure the completion of the relevant referral form. Office holders who consider that some adjustment to their working practices is required should approach their relevant senior judge.

Where a recommendation for a reasonable adjustment arises from a medical referral to the Ministry's independent occupational health physician, the Judicial Office will copy the report to the judicial office holder and to their administrative office in HMCTS, who will then liaise with the relevant senior judge/court manager/Health and Safety representative, as appropriate.

5 Shadowing, training and retirement

5.1 The Judicial Work-Shadowing Scheme

Advertising material for the Judicial Work-Shadowing Scheme⁸ will explain that reasonable adjustments may be made to enable those who have a disability to take up the opportunity the scheme offers. Applicants to the scheme who ask for adjustments will be contacted by the relevant official in order to discuss their requirements.

5.2 Judicial College and judicial training

The Judicial College (JC) has policies and procedures in place to ensure that reasonable adjustments can be made if appropriate during the training process for disabled judicial office holders. The Judicial College will be informed of any reasonable adjustments which have been agreed for new appointees. Serving disabled judicial office holders should inform the course organiser of any reasonable adjustments necessary to assist them at the earliest opportunity.

5.3 Retiring disabled judicial office holders

On leaving office, disabled judicial office holders who are in possession of specialist equipment should alert the appropriate official of their departure in order to discuss its return.

⁸<http://www.judiciary.gov.uk/about-the-judiciary/judges-magistrates-and-tribunal-judges/information-about-shadowing-a-judge/introduction>

6 Recording adjustments requested, made and refused

All structural reasonable adjustments requested, made and refused must be recorded and a log completed. These documents should be kept by the HMCTS Health & Safety Team. This will:

- assist people when making decisions in the future, and
- identify good practice that can be shared across HMCTS.

Additionally, if legal action were taken as a result of any decision, any organisation would need to be able to demonstrate that careful consideration had been given to the request and a reasonable conclusion reached.

A claim under the Equality Act 2010 can be made up to six months after the date of the decision, so records must be retained for at least 12 months.

6.1 Right to Appeal⁹

Office holders (prospective appointees, newly appointed or serving) may make an appeal against a decision not to make 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 informally, at a local level, before commencing formal appeal proceedings.

7 Review and evaluation

The first consultation on this policy was carried out between February and April 2008. Details of the last review of the policy can be found at www.justice.gov.uk/publications/policy-reports.htm

A second review took place during the early autumn of 2010 to reflect the changes brought about by the enactment of the Equality Act 2010 and the policy has accordingly been updated to reflect the findings of that review. An initial Equality Analysis (EA) relating to this review has been completed and is detailed at Annex B of this document.

However, as there is insufficient evidence available to support effective analysis of this policy, it is proposed to undertake a comprehensive consultation with judicial office holders, in order to ascertain their awareness of the policy, as well as their thoughts on the operational process, if they have utilised it. Upon completion of this consultation a detailed analysis will be completed and a revised EA produced. The outcomes from this consultation will be factored into a subsequent updated policy document.

The policy will be reviewed annually to ensure that it remains fit for purpose, which will include an evaluation of the effectiveness of the way that the policy has been applied at an operational level.

⁹Discussions are currently underway with respective bodies responsible for particular stages of the process to develop the detailed appeals process.

Annex A – Glossary of Terms and Abbreviations Used

The following is a list of abbreviations and terms used throughout the policy document. Where it would prove beneficial web links have been provided in order to provide additional information and guidance. In addition links to associated organisations have also been included within the list.

Abbreviation	Definition
EA	Equality Analysis (previously Equality Impact Assessment) This process has been designed to ensure that policies and services are aligned to deliver public sector equality duties. It is an evidenced-based process that will help you to gather and analyse information so that the impacts of your proposals on different communities and groups of people can be considered
EHRC	Equality and Human Rights Commission www.equalityhumanrights.com
HMCS	Her Majesty's Courts Service From 1 April 2011, Her Majesty's Courts Service and the Tribunals Service integrated to form Her Majesty's Courts and Tribunals Service
HMCTS	HM Courts & Tribunals Service
GEO	Government Equalities Office www.equalities.gov.uk
JAC	Judicial Appointments Commission www.judicialappointments.gov.uk
JC	Judicial College (formerly Judicial Studies Board) http://www.judiciary.gov.uk/training-support/judicial-college
JO	Judicial Office www.judiciary.gov.uk
MoJ	Ministry of Justice www.justice.gov.uk
ODI	Office for Disability Issues www.officefordisability.gov.uk
TS	Tribunals Service From 1 April 2011, Her Majesty's Courts Service and the Tribunals Service integrated to form Her Majesty's Courts and Tribunals Service
Chancellor of the High Court	The Chancellor of the High Court is head of the Chancery Division, which deals with the resolution of disputes involving property in all its forms
Judicial Work Shadowing Scheme	This scheme gives eligible legal practitioners who are considering a career in judicial office, either now or in the future, an insight into the work of a judge. The scheme is administered centrally by the Judicial Office for England and Wales
Lay Magistrate	Magistrates are trained, unpaid members of the local community, who sit part-time and deal with less serious criminal cases
Lord Chief Justice	Head of the Judiciary of England and Wales and President of the Courts of England and Wales

Annex B – Initial Equality Analysis

1. Name of the legislation, policy, strategy, project or service being reviewed.

Reasonable Adjustment policy for judicial office holders.

2. Individual Officer(s) & unit responsible for completing the review

Graham Mackenzie, Constitution & Judiciary Division

3. What sources of information have you gathered since the proposals were implemented that will help you to assess the actual equality impacts of this particular piece of work on different groups of people (such as statistics, survey results, complaints analysis, customer feedback).

General

The Office for Disability Issues reports that there are over 10 million people with a limiting long term illness, impairment or disability in the UK¹⁰, which is approximately 17.5% of the population of the United Kingdom.

Applicants for Judicial Office

The Judicial Appointments Commission is responsible for providing reasonable adjustments for those disabled candidates who make a request i.e. in relation to any attendance required in support of the selection process. Between the period of October 2008 and September 2010 the JAC undertook 197 reasonable adjustments following requests from candidates. The Lord Chancellor's Advisory Committees is responsible for providing reasonable adjustments for those disabled applicants who apply for the Magistracy. Data relating to the number of requests received are currently not retained.

Existing Disabled Judicial Office Holders

To date the only data that has been collected relating to this policy is on the number of referrals that have been made and considered by HMCS for existing disabled judicial office holders (including Magistrates); however no qualitative data has been collated regarding customer feedback on how the policy has been operated since implementation, whether any adjustments completed met the individuals requirements, or whether the existence of

the policy was a determinative factor in an individuals consideration of whether to apply for a judicial vacancy (see Question 8).

Year	Judicial Office Holder Referrals
2007/08	12
2008/09	16
2009/10	17
2010/11	12

Table 1: Information provided by HMCS Health and Safety Team

As at 31 March 2011 there were 26,966 magistrates in England and Wales, of which 4.7% declared that they had a disability.

In relation to courts based judiciary, as at 31 March 2010 there were 3598 judges in England & Wales. The number of disabled judicial office holders is currently not known (see Question 4).

4. Are there any gaps in the information that make it difficult or impossible to form an opinion on how this particular piece of work has affected different groups of people? If so, what are the gaps and how do you plan to collect the missing information. Please provide details and go to question 10.

Judicial Database

Currently the judiciary are not asked to declare whether they consider that they have a disability and accordingly the data currently held on the disability of judges is not complete. However, the Judicial Office is considering the most appropriate and effective mechanism to obtain comprehensive information following the implementation of the Equality Act and the creation of HM Courts and Tribunals Service. Once the data obtained is sufficiently robust for use it will be published.

General

The Policy was last reviewed in 2008 and another review is overdue. This policy has been updated to reflect the introduction of the Equality Act 2010.

¹⁰<http://odi.dwp.gov.uk/disability-statistics-and-research/disability-facts-and-figures.php>

After publication of this updated policy it is proposed to undertake a consultation with judicial office holders in order to ascertain their awareness of the policy as well as their thoughts on the operational process, if they have utilised it. In addition this review will also consult with the following:

- Ministry of Justice officials
- Judicial Office officials
- Judicial Appointments Commission officials
- The Standing Committee for Judicial Welfare
- Ministry of Justice legal officials
- The Disability Network
- HM Courts & Tribunals Service – Health & Safety and Estates officials
- The Magistrates' Association
- Judicial College

This consultation will be used to develop a detailed EA, which will be published as part of the revised policy document.

Upon completion of the review, a revised policy document will be published on the appropriate websites. It is proposed that the policy be reviewed on an annual basis to ensure that it is maintained and that it is fit for purpose.

5. Does the information indicate that there are unexpected adverse equality impacts? Please provide details of what the impacts are and whom they affect.

This is an update to an existing policy. Based upon the available data there is no evidence to suggest that there has been any adverse impact. However, as part of the subsequent consultation this area will be investigated in order to obtain clarity.

6. Can the adverse impacts be justified without taking steps to mitigate or remove the impacts? Please provide details of why you plan to take no further action.

There is no evidence that there have been adverse impacts arising from this policy. This question will be re-visited as part of the subsequent consultation.

7. If you cannot justify the adverse impacts, what further action do you plan to take to minimise or remove the impacts? Please provide details including who will complete the work and when.

Note – if further work is required, another review date will need to be fixed – see question 10

There is no evidence that there have been adverse impacts arising from this policy. This question will be re-visited as part of the subsequent consultation.

8. Is there any evidence that this particular piece of work has delivered positive equality impacts for different groups of people and/or improved equality of opportunity? Please provide details of the impacts and the evidence used to identify them.

The publication of the policy and continued resoluteness by the MoJ towards delivering reasonable adjustments demonstrates its commitment to:

- promote equality of opportunity, and
- encourage participation of disabled people in public life.

We hope and expect that this policy will deliver positive equality impacts for those seeking reasonable adjustments.

Existing judicial post holders and applicants for judicial posts

Currently there is little or no cohesive data available regarding the numbers of disabled people within the eligible pool (i.e. those members of the Bar, Law Society or ILEX who have the right level of experience) or the exact numbers of disabled judicial office holders. However, data has been collated on the numbers of existing judicial office holders who have requested adjustments to be made and the outcomes of those requests.

Evidence collected by the JAC¹¹ regarding those who apply for judicial office and are successful indicates that 'the gap in the success rate between applicants with a disability and those without disappeared'¹².

¹¹July 2010 - analysis of the appointment of women and BME candidates to judicial office over 10 years completed jointly by the JAC and Ministry of Justice

¹²http://www.judicialappointments.gov.uk/static/documents/News_Release_JAC_Diversity_Statistics_Oct09Mar10.pdf

- 9 If this particular piece of work was expected to deliver positive equality impacts and outcomes and the evidence suggests that this has not happened, please say whether you intend to take further action to remedy this and if not, provide your reasons for taking no further action.**

More detailed analysis will be required to ascertain if there remains a perception amongst disabled applicants that judicial office is 'not for them', as this will not encourage full participation.

In addition, a comprehensive data analysis will be required in order to collate a more accurate understanding of the exact number of disabled judicial office holders there currently are, in particular reflecting the expanded definitions within the Equality Act 2010.

- 10 If you are unable to assess the actual equality impacts or further work is required to minimise or remove unexpected impacts, you will need to set another date for review. Please provide the next review date and details of who is going to complete it.**

Details of who will be responsible for managing the next review have yet to be confirmed, however it is agreed that this review will take place within 12 months of publication, i.e. by May 2012.

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