



# Ministry of Justice



Concordat between:

The Ministry of Justice (MOJ) and the Supreme Court of  
the United Kingdom (The Court)

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## **Section - 1 Introduction**

This Concordat provides a framework for co-operation between The Ministry of Justice and the Supreme Court of the United Kingdom (the Court). The purpose of this document is to guide the actions of officials on matters for which they have responsibility.

The Concordat is not intended to constitute a legally enforceable contract nor to create any rights or obligations which are legally enforceable beyond those that are contained within the Constitutional Reform Act 2005 (as amended), the Constitutional Reform and Governance Act 2010 and the Crime and Courts Act 2013. The parties agree to abide by the provisions and obligations set out in this Concordat wherever practicable.

## **Section 2 Purpose**

The purpose of this Concordat is to highlight the independence of the Court, the process by which the Court secures its resources and to indicate the elements of good practice which will inform developing processes and contacts between the Ministry of Justice and the Court. This will promote understanding of the operation of policy and practice in their respective jurisdictions and of the Court's operation to ensure that the actions of one party do not unwittingly create difficulties for the other.

This Concordat outlines good practice in situations where responsibility lies with the Lord Chancellor, the President of the Court and the Chief Executive of the Court respectively, but it also takes account of the direct engagement which the Court has with other parties in support of its operating model.

## **Section - 3 Respective Responsibilities**

(a) The Lord Chancellor is:

- under a duty to uphold the continued independence of the judiciary.
- under a duty to ensure that the Court is provided with offices, court house and such other resources as the Lord Chancellor thinks are appropriate for the Court to carry on its business.

- responsible for supporting the judiciary to enable them to fulfil their functions for dispensing justice.
- responsible for laying before Parliament as a Statutory Instrument any Supreme Court Rules submitted to him by the President of the Court.
- responsible for laying a copy of the annual report provided by the Chief Executive before each House of Parliament.
- responsible, with the agreement of the Treasury, for prescribing - by Order - all fees payable in respect of anything dealt with by the Court.
- responsible for carrying out all those functions assigned to him by legislation regarding the appointment and medical retirement of judges of the Court.
- responsible for responding to Parliamentary Questions on matters that relate to the Court and to correspondence on matters that relate to Government policy towards the Court.

(b) The President of the Court is:

- responsible for carrying out those functions assigned to the President by legislation and regulations relating to the selection of Judges of the Court.
- responsible for appointing the Chief Executive and officers and staff of the Court, unless delegated to the Chief Executive.
- responsible for making rules governing the practice and procedure to be followed in the Court.

(c) The Chief Executive is responsible for:

- undertaking such functions as are delegated by the President of the Court.
- acting as the Accounting Officer of the Court.

- chairing the Court's Management Board.
- determining the numbers of officers and staff of the Court and the terms on which they are appointed in accordance with the legal and regulatory frameworks for the civil service.
- ensuring that the Court's resources are used to provide an efficient and effective system to support the Court in carrying on its business.
- preparing an annual report - which includes financial statements audited by the Comptroller and Auditor General of the National Audit office (NAO) - about the business of the Court during each year.
- responding to letters from Peers and members of Parliament on the operation of the Court.

(d) Neither the Lord Chancellor, nor any other Minister, will have any role in relation to judicial decisions.

#### **Section 4 - Consultation arrangements, early notification and exchange of information**

The MOJ and the Court recognise the need to keep in close touch with each other on matters of common interest or where the work of one may have some bearing on the responsibilities or duties of the other.

Whenever possible each party should be forewarned of relevant action by the other in sufficient time to allow representations to be made and for these representations to be fully considered. For the avoidance of doubt this specifically excludes any requirement to give notice of, or any information about, any forthcoming judgment of the Court.

The Court will provide monthly reports to the Treasury as other publicly funded bodies are required to do, in addition to publishing an annual report and business plan.

The Court will provide:

- any information needed in support of Statutory Instruments on Fees and

- reports that are to be submitted to Parliament.

## **Section 5 - Processes and Procedures**

### **Appointments**

Staff and Officers at the Court are civil servants and as such are required to comply with the legal and regulatory frameworks for the civil service.

Judicial Appointments are carried out in accordance with the provisions of the Constitutional Reform Act 2005 (as amended).

The administration of the Supreme Court is a non - Ministerial Department, headed by a Chief Executive who is a civil servant appointed by a process involving an *ad-hoc* commission. The appointment of the Chief Executive, officers and staff of the Court is by the President of the Court (unless delegated to the Chief Executive) but in accordance with Civil Service Commission best practice.

### **Governance**

The Chief Executive will be principally answerable to, and operate under the day-to-day guidance of, the President of the Court. The Chief Executive is therefore solely responsible for the administration of the Court as delegated by the President and not subject to ministerial control.

The staff of the Court will be civil servants, accountable to the Chief Executive and not to the Lord Chancellor.

No action taken by any party to this Concordat shall have the effect of compromising or challenging the independence of the Court or the Justices of the Court.

### **Finance**

The President of the Court and the Chief Executive will determine the bid for resources for the Court in line with Government Spending Review timescales.

Estimated income that forms a part of the Court's bid for resources will include income that is in the form of direct contributions from

the three jurisdictions from which cases come to the Court, i.e. England & Wales, Scotland and Northern Ireland.

The sizes of these contributions were originally determined, when the Court was created, to reflect the proportions of the Court's civil caseload, which came from each jurisdiction, through a process of negotiation that concluded with the agreed funding model. Contributions under that model are intended to reflect the general contribution made by judgments of the Court to civil justice beyond the circumstances of each individual case.

Agreed contributions will be paid to the Court in accordance with the agreed timetable contained in the funding model.

The Court will discuss its resource needs with the Treasury and the MOJ in advance of formally submitting its bid for resources to the Lord Chancellor. The Lord Chancellor will be a conduit for the Supreme Court bid and pass this on to the Treasury without alteration. This follows the agreed practical application of the financial bid process as explained during the passage of the Bill for the Constitutional Reform Act 2005 (14 December 2004 - House of Lords Hansard columns 1236 – 37). The Lord Chancellor may add any accompanying comment they wish regarding the merits of the bid, but they will first have discussed their comments with the President.

The Lord Chancellor will deal directly with the Treasury to secure resources for the Court during the Spending Review process, but this is without prejudice to the Court's right also to discuss matters at official level directly with Treasury officials.

Accordingly, the Treasury will scrutinise the Court's bid and approve the Court's overall financial expenditure for the Spending Review period alongside, but ring-fenced from, the expenditure approved for the MOJ Group.

Following the settlement, the MOJ will ensure the Court is notified of its separate Departmental Expenditure Limit (DEL) received from the Treasury.

The Chief Executive will then submit annual Estimates to HM Treasury which will be presented before the House of Commons as part of the overall Estimates.

The House of Commons will consider and approve the overall Estimates and resources will be transferred accordingly.

Once approved, resources will go directly to the Supreme Court from the Consolidated Fund, they will not go via the MoJ. Furthermore, these funds will be ring-fenced to the Supreme Court.

The Chief Executive will allocate resources as he considers appropriate to ensure an effective and efficient system to support the Court in carrying out its business.

### **Reporting and Remuneration Arrangements**

The Court has established a Remuneration Committee, which operates as a committee of its Management Board in considering the reporting arrangements and remuneration of the members of staff of the Court, including both senior civil service (SCS) level staff and delegated grades. The Court will ensure that the objectives and reports of its SCS staff will, as necessary, be benchmarked for weight against comparable grades elsewhere in the Civil Service, in discussion with Cabinet Office, notwithstanding the fact that staff report to the President and no part of their role contributes to the delivery of objectives set by Ministers. The Remuneration Committee, where two Non-Executive Directors are in the majority, will make recommendations on remuneration to the Management Board for its consideration. The Remuneration Committee's advice will be in line with the annual Civil Service Pay guidance issued by HM Treasury in respect of all civil servants.

The end-year reports for the SCS members in the Court will be provided, where appropriate, to a seconding department (MOJ or other Government department) for information, once they are completed. This information will support future talent management discussions and any future job moves following the end of the secondment to the Court.

### **Procedural rules and practice directions**

The President of the Court may make rules and Practice Directions governing the practice and procedure to be followed in the Court.

### **Education and training**

The President is responsible for the provision and sponsorship of any judicial training required within the resources provided to the Court.

## **Judicial complaints and discipline**

The President is responsible for providing a system for considering and determining complaints against the personal conduct of the justices and ensuring that complaints are dealt with in accordance with the procedures set out by the Court and published on its website.

## **Complaints about the Chief Executive**

The President is responsible for handling complaints against the Chief Executive, seeking the advice of one of the Non-Executive Directors on the Management Board.

## **Section 6 — Reaching Agreement**

The MOJ and the Court will seek to resolve any disagreement or dispute that may arise over the operation of this Concordat at working level wherever possible. If that is not possible, the matter may be escalated to the Chief Executive of the Court and the Permanent Secretary of the MOJ for a decision. Very exceptionally it may be necessary to refer matters to the Lord Chancellor and the President of the Court for resolution.

## **Section 7 — Review**

The operation and content of this Concordat may be reviewed at the request of either the Court or the MOJ and a formal review of its continued appropriateness will be carried out at least every five years after the date of its first agreement on 30 October 2013.

## **30 October 2018**