

Good Character Guidance

1. As part of its selection process, the Judicial Appointments Commission (JAC) takes its obligation under section 63(3) of the Constitutional Reform Act 2005 to select for appointment only those candidates who are of 'good character' very seriously.
2. The JAC adopts a very wide interpretation of 'good character' so please read this guidance carefully. It will help you to decide whether there is anything in your past conduct, or present circumstances, that would affect your application for judicial appointment.
3. This guide is intended to assist candidates in making any relevant declaration and is not exhaustive. You should always seek advice from the JAC if you are unsure about any matter relevant to your obligation to disclose.

Continuing obligation to disclose

4. **You have a continuing duty, throughout the time that your application is being considered, to inform the JAC of all relevant matters that might affect the acceptability of your application when considered against this guidance.**
5. For each new application, you should not assume any previous knowledge of relevant matters by the JAC. You are therefore required to declare in each application all relevant matters, whether or not:
 - i. you have declared the information in a previous application or
 - ii. you have declared the information to another body or
 - iii. you already been selected for judicial office or are/have been a judicial office holder or
 - iv. the incidents occurred outside the United Kingdom
6. Where a time period for disclosure is specified in this guidance (for example, you must disclose current endorsements on a motor vehicle licence, which remain in place for four years), you must make the disclosure that is applicable on the date that you submit your application. The JAC will then decide the date that it considers the relevant date in respect of these time-specific disclosures, usually a period within 6 months of your application. For example, if you have an endorsement that is 3 years and 11 months old at the time you make your application then you must disclose this, but if the JAC considers your application 2 months later it will consider this endorsement to have expired as it is more than 4 years old.
7. More information is set out below about your obligation to disclose. Please read it carefully.
8. **Please note that failure to disclose any relevant matter is likely to have an adverse effect on your application.**

Background

9. The principles the JAC adopts in determining good character are based on the overriding need to maintain public confidence in the standards of the judiciary and the fact that public confidence will only be maintained if judicial office holders and those who aspire to such office maintain the highest standards of behaviour in their professional, public and private lives.
10. The principles of this guidance apply equally to legal professionals, existing judicial office holders and lay members of the public applying for a judicial office. The JAC will consider character issues declared for previous applications and any behavioural trends over time, particularly where candidates have been recommended for judicial office.
11. Following legislative change in August 2016, applications to the JAC are covered by the Exceptions Order to the Rehabilitation of Offenders Act 1974.¹ This means you must disclose to the JAC all criminal convictions or cautions that you have ever received, regardless of whether they are spent or unspent.
12. The JAC will take into account the whole picture of a candidate's character when deciding whether to recommend a candidate for judicial appointment. The JAC will not reject a candidate on the basis of issues it considers minor – but all potentially relevant issues must be declared, as the Commission will assess recurring themes in addition to isolated incidents.

Suitability for judicial appointment on character grounds

13. The JAC makes an assessment of any character issues declared on your application form. To do so, Commissioners are convened at regular Selection and Character Committee (SCC) Meetings, where they will consider any relevant character issues by applying this guidance and their own discretion.
14. The JAC will always make its decision on your character prior to making any recommendation for judicial appointment. If the JAC is not satisfied that you meet the high standard required of judicial office holders, including if you have not provided in your application form or on request sufficient information for the Commissioners to be satisfied of the same, your application will not be allowed to proceed. Candidates should be aware this may mean their application will be declined late in the competition on some occasions.
15. It is in your own interests to ensure that the information supplied on your application form is detailed, accurate and up to date.
16. Failure to make full and accurate disclosure during your application may in itself be treated by the JAC as evidence of your unsuitability for judicial appointment.

Gathering information on candidates' character

17. In addition to considering the character issues declared on your application form, the JAC makes character checks with various bodies including, but not limited to, the ACRO Criminal Records Office, HM Revenue & Customs, The Insolvency Service and professional regulatory bodies (such as Bar Standards Board, Solicitors Regulation Authority, Chartered Institute of Legal Executives and General Medical Council).

¹ The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, as amended, most recently by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2016.

18. **Remember your continuing duty, throughout the time that your application is being considered, to inform the JAC of all relevant matters that might affect the acceptability of your application when considered against this guidance.**

Criminal offences

Criminal convictions and cautions (other than motoring offences)

19. You should provide details of the type and date of any conviction (including a brief summary of the offence) and the sentence passed.
20. Judicial appointments are covered by the Exceptions Order to the Rehabilitation of Offenders Act 1974 and spent convictions and cautions are not protected from disclosure for these purposes. The JAC takes all criminal convictions and cautions seriously, and you must disclose to the JAC all criminal convictions and cautions you have ever received regardless of whether they are spent or unspent.
21. A criminal conviction or caution may prevent your appointment. However, the JAC recognises the rehabilitative intent of the Rehabilitation of Offenders Act 1974, and may at its discretion determine that a conviction or caution should not automatically prevent your application from proceeding. It is more likely to allow your application to proceed where it considers that the offences are historical and less serious, and do not cast doubt on your current suitability for appointment. It is less likely to allow your application to proceed if you have committed offences that are recent, or of a more serious nature, or if the offences involve fraud or dishonesty. If you have committed an offence that has led to the imposition of a term of imprisonment, it is unlikely that the JAC will allow your application to proceed.
22. As a general guide, the JAC may consider you suitable for appointment following a period of 6 years after you have received a caution, or a period of 11 years following a conviction. However, this is a general guide only and the JAC will make each decision on a case-by-case basis. In deciding whether or not your application can proceed, factors the JAC will take into account include:
- a. the nature, number and date(s) of the offence(s)
 - b. your age on the date the offence(s) were committed
 - c. the circumstances and seriousness of the offence(s)
 - d. the sentence imposed
 - e. the time that has elapsed since the conviction or caution

Motoring offences

23. Convictions for motoring offences must be declared in the section of the application form relating to criminal convictions. In general, any conviction for a motoring offence will be treated in the same way as any other criminal conviction (please note the exception applied to fixed penalties below).
24. The JAC treats offences related to driving under the influence of alcohol or drugs seriously. Convictions for any such offence will mean that it is unlikely that the JAC will allow your application to proceed. The JAC will consider each case on its merits including taking into consideration the factors listed at paragraph 22 above.
25. Any disqualification from driving must be declared. If you have only regained your licence following disqualification within the last 4 years it is unlikely that the JAC will allow your application to proceed.
26. You must declare any other endorsement currently remaining on your licence, which in practice will mean any endorsement ordered within the last four years. This will include

endorsements resulting from exceeding the speed limit or using a hand-held mobile telephone or device, both of which the JAC regards as serious.

27. It is unlikely that the JAC will allow your application to proceed where:

- a. there are 6 or more penalty points currently endorsed on your licence as a result of a single incident or
- b. the total number of points currently endorsed on your licence exceeds 6 points

28. If there are fewer than 7 points currently endorsed on your licence, and no single incident has resulted in a penalty of 6 points, the JAC will be more likely to allow your application to proceed, but in coming to a decision it will take into account the nature of the offence(s) involved.

Fixed Penalty Notices, Penalty Charge Notices and Penalty Notices for Disorder

29. Whilst fixed penalty notices, penalty charge notices and penalty notices for disorder do not form part of a criminal record, you must declare any fixed penalty received in the last four years (including moving traffic offences). In considering whether a fixed penalty is likely to prevent you from being appointed, the JAC will consider factors such as the nature, number and date(s) of the incident(s) involved.

30. Where a fixed penalty notice has been referred to a court due to non-payment or the notice has been unsuccessfully challenged, this will be considered in accordance with the guidance on criminal convictions at paragraphs 19 to 23 above.

Parking or speeding dealt with by informal warning or speed awareness course

31. You need not declare any parking tickets or speeding offences dealt with by way of an informal warning or a speed awareness course.

Current investigations

32. You must declare information about any criminal charges you are subject to, or any ongoing criminal investigation into your conduct. Depending on the particular circumstances of the investigation, your application may be allowed to proceed. However, it is unlikely that you will be recommended for judicial appointment until the outcome of the investigation is known.

Financial matters

Insolvency and debt

33. Being an undischarged bankrupt or someone who has an outstanding Individual Voluntary Arrangement (IVA) or any other similar arrangement will normally prevent you from being selected for judicial appointment. If you are otherwise unable to meet your financial obligations such that you are, in effect, insolvent, this may also prevent you from being selected for judicial appointment. However, the JAC will consider each case on its merits, including factors such as the length of time the debt has existed and whether or not it has been substantially reduced. You must provide full details of the circumstances with your application.

34. If you have been discharged from bankruptcy, the JAC is unlikely to allow your application for judicial appointment to proceed for a period of at least 5 years from the date of discharge.

35. Depending on the circumstances, you may be prevented from being selected for judicial appointment if you have been:

- discharged from an IVA or
- sued to judgment for any debt or
- a director of a company that has become insolvent

36. The JAC will consider each case on its merits so you must provide full details of the circumstances with your application.

VAT and tax

37. The JAC recognises that the tax affairs of some individuals (for example, self-employed professionals) are more complex than others, and these individuals may at times face greater difficulties in meeting their tax obligations. However, the JAC considers that good character requires that your VAT and other tax affairs are in good order and that you have complied, in a straightforward and transparent way, with your obligations in relation to taxation. As a minimum, this means that you are up to date with your tax payments, or have an appropriate agreement in place with HMRC to ensure payment is made, and a demonstrated record of meeting these payments.

38. Any VAT or tax assessment, notice or penalty applied against you, or against your company or firm for a matter for which you had a personal responsibility, must be declared in your application form. You should provide a brief explanation for any such assessment, notice or penalty.

39. Occasional administrative penalties for late returns or payments will not normally prevent you from being selected but full details must be provided, preferably supported by documentary evidence. Repeated late returns or payments, or county court judgments or actions taken in the courts to pursue you for payment will be considered on a case by case basis.

40. The JAC will consider each case on its merits, including factors such as the reason for the charges, the level of arrears accrued, the number of penalties or surcharges incurred in the period over which the arrears accrued, whether the problems were recurrent or one-off in nature, whether an agreement to pay was – or has been – entered into and complied with to date, and any mitigating circumstances.

41. Candidates are advised that, should their tax affairs be deemed not to be in order, this may prevent them from being recommended for judicial appointment, and they may be invited to re-apply for a future competition once their overall circumstances improve.

Professional conduct

42. This section applies to all professional conduct you have been engaged in, regardless of whether it was undertaken on a paid or voluntary basis. This includes (but is not necessarily limited to):

- regulated professional conduct – for example work as a lawyer, doctor, accountant, chartered surveyor
- judicial conduct – including all salaried or fee-paid work in any court or tribunal, and any voluntary sitting in roles such as a tribunal member, lay magistrate
- conduct in the course of any other employment, whether or not this is as part of a regulated profession

- conduct in the course of any voluntary work you have undertaken, for example as a board member of a charity

43. The JAC takes a broad view of the matters covered by 'professional conduct' and, if in doubt, you should disclose any matter that might be of relevance to an assessment of your character.

Professional negligence and other legal action

44. The JAC will consider on its merits each case of a finding against you of professional negligence, so you must provide full details on your application form. The JAC recognises that some candidates, because of the nature of their practice, are more likely to face claims of professional negligence (see further, paragraph 51).

45. You must disclose any professional negligence findings against your partners or other employees if they involved you personally, directly or indirectly, or someone under your direct supervision.

46. You must also disclose any action for unfair or wrongful dismissal or discrimination or harassment, or any other adverse finding or settlement in civil proceedings against you (including any settlement made with a non-disclosure clause (NDC) as the NDC cannot override the obligation to disclose), or against your company or firm in respect of a matter for which you had a personal responsibility.

47. In considering professional negligence and other legal action, the JAC will consider factors such as the degree of personal culpability involved, how long ago the events took place, the nature of the claim and the outcome. The JAC recognises that there is a difference between isolated professional mistakes, and conduct which suggests a serious disregard for professional obligations. The latter is more likely to raise a concern as to your suitability for appointment.

Complaints and disciplinary action

48. You must disclose the circumstances if you have been dismissed, or asked to resign and resigned, from employment or from a position of trust, fiduciary appointment or similar.

49. If you have ever been removed from judicial office, you will not be considered for selection for a further judicial appointment. This applies equally if you retired or resigned under circumstances where you may otherwise have been removed from office.

50. The JAC will consider on its merits each case of a professional body upholding a complaint or disciplinary matter against you personally or someone under your direct supervision. Where no findings have been made against you personally, or where findings relate solely to your partners, or other members or employees of the firm, they need not be declared.

51. The JAC will consider factors such as:

- recognition that some people, by the nature of their work, are likely to receive a greater number of complaints than others (for example those working in criminal or mental health practices)
- the number of complaints or disciplinary matters upheld
- the nature and seriousness of the complaint(s) or disciplinary matter(s)
- the action (if any) taken by your or any other professional body
- your personal culpability
- whether it is a finding of misconduct, or a finding of inadequate professional service

52. The JAC will generally view misconduct findings more seriously than findings which relate solely to inadequate professional service, but both must be declared.
53. If you have been removed from professional practice on any grounds of misconduct then you will not be considered for selection.
54. If you have been removed from professional practice on any other grounds, you will not be prevented from being considered for selection for a judicial appointment once you have been reinstated and have resumed practising for five years without further incident. The JAC will consider each case on its merits, including factors such as the degree of personal culpability involved, how long ago the events took place and how long you have practised without further incident since reinstatement.
55. If you have been suspended from practice as a penalty, you will not be considered for selection during the period of suspension and for at least a year following the end of that period.
56. It is unlikely that the JAC will allow your application to proceed if there are conditions on your practising certificate.

Current investigations

57. You must declare information about any ongoing investigations, where no determination has yet been made. Depending on the particular circumstances of the investigation, your application may be allowed to proceed. However, it is unlikely that you will be recommended for judicial appointment until the outcome of the investigation is known. The JAC may contact you for an update on any ongoing investigation prior to consideration of your application at the SCC meeting.
58. If you have been suspended from practising your profession pending further investigation or a tribunal hearing, it is unlikely that you will be considered suitable for selection during your period of suspension.

Further information to be disclosed

Presence on social media or online networking sites

59. Other factors may include misuse of social media or online networking sites, where you expressed views that may be perceived as pejorative under the Equality Act. It may also include a breach of the conditions of use of the social media channel or networking site where you were sanctioned.

Breaches of the Integrity Statement

60. The JAC is committed to ensuring the integrity of its selection process and material. Candidates are required throughout the selection process to confirm their commitment to maintaining confidentiality and any breaches may be referred to professional regulatory bodies or disqualification from current and future exercises. If you have been the subject of such a referral or disqualification, you should declare the circumstances along with any sanction or penalty for consideration by the Commission.

Other matters

61. The application form asks whether there is anything else you want to bring to the attention of the JAC. While it is not possible to provide a definitive list of the matters that could be relevant, examples might include issues of controversy in which you have been involved, and the conduct of those with whom you have business connections.
62. Any failure to declare on the application form relevant information which later comes to light is likely to rule out further consideration of your application.
63. Failure to disclose information additional to that included on your application form, upon the request of the JAC and to the timetable requested by the JAC, may also rule out further consideration of your application.
64. In addition to the categories covered above, you should consider if there is any factor or event, either currently or that has occurred in the past, or online such as on social media channels which might either cast doubt in the view of the public on your suitability for judicial office or cause embarrassment to that office. If you consider that there might be such a factor or event, you must declare it, even if it has been declared in a previous application to the JAC.

Use of character information in the assessment of competencies

65. The JAC considers that information supplied in answer to the 'character' questions on your application form may provide evidence relevant to the competencies it is looking for in its selection exercises. Therefore, the information may be used by the JAC when considering whether you have demonstrated the competencies as advertised for the role in question.

Effective from 8 January 2019

Reviewed and updated by the Judicial Appointments Commission, September 2018