

October 2007



## GUIDE TO THE CONDUCT OF JUSTICES' CLERKS AND ASSISTANT JUSTICES' CLERKS

### INTRODUCTION

1. *The Justices' Clerk occupies a unique position within Her Majesty's Courts Service in that, although a civil servant and subject to the management of the Area Director for administrative purposes, he/she has complete independence from direction (other than by the High Court), both when undertaking a judicial function and when giving legal advice to magistrates. This independence extends not just to advice in individual cases, but to general legal advice, whether given through training events or otherwise.*
2. *Accordingly, although subject to the provisions of the general Civil Service Code Justices' Clerks are not subject to the direction of the Lord Chancellor or any other person in carrying out their judicial obligations as set out in Section 29 of the Courts Act 2003 and the Constitutional Reform Regulations.*
3. *Section 29 of the Courts Act 2003:*
  - i. *A Justices' Clerk exercising -*
    - a. *a function exercisable by one or more justices of the peace,*
    - b. *a function specified in section 28(4) or (5) (advice on matters of law, including procedure and practice), or*
    - c. *a function as a member of the Criminal Procedure Rule Committee or the Family Procedure Rule Committee,**is not subject to the direction of the Lord Chancellor or any other person.*
  - ii. *An assistant clerk who is exercising any such function is not subject to the direction of any person other than a Justices' Clerk.*
4. *In relation to general conduct and management of resources, DCA people management policies and procedures apply to Justices' Clerks, and Assistant Justices' Clerks.*

### ***The Role of Justices' Clerks and Assistant Justices' Clerks***

5. To maintain the confidence of the wider community and the Magistracy in the system of summary justice, Justices' Clerks and Assistant Justices' Clerks (when exercising their judicial and advisory responsibilities) must act, and be seen to act, independently. This independence has to be preserved in the interests of justice. It is not a privilege granted to Justices' Clerks or Assistant Justices' Clerks by virtue of their office, but an essential safeguard of individual liberty and for the impartial resolution of disputes, particularly those between the citizen and the Government or other institutions of the State. As such they should act in conformity with the Bangalore Principles of Judicial Conduct, as these principles establish a standard of ethical conduct that provides guidance to Justices' Clerks (and Assistant Justices' Clerks) and affords them a framework for the regulating of their conduct.
6. Justices' Clerks and Assistant Justices' Clerks act both –
  - in a judicial capacity, exercising the powers of a Justices' Clerk and of a single magistrate to ensure that cases (criminal, civil and family) come to trial in a timely and well prepared form, and
  - in an advisory capacity, advising magistrates on all matters of law, practice and procedure, etc<sup>1</sup>.
7. Additionally, Justices' Clerks are responsible for –
  - the decision to delegate to an Assistant Justices' Clerk the judicial powers of the Justices' Clerk and powers of a single magistrate;
  - the performance of their duties of those deputising for the Justices' Clerk;
  - the nature and quality of advice given by an Assistant Justices' Clerk; and
  - the giving of advice to magistrates more generally on the discharge of their duties (see Section 28 (4) and (5) of the Courts Act 2003 in particular).
8. The six Bangalore principles (as applicable to Justices' Clerks and Assistant Justices' Clerks) are –
  - i. Judicial independence is a pre-requisite of the Rule of Law and a guarantee to all of fair trials and therefore a Justices' Clerk and an Assistant Justices' Clerk shall both uphold their independence and that of the magistracy.
  - ii. Impartiality is essential to the proper discharge of a Justices' Clerk's and an Assistant Justices' Clerk's responsibilities including making any comment in public or otherwise that might affect the fair trial of any person or issue.
  - iii. Integrity is essential to the proper discharge of a Justices' Clerk's and an Assistant Justices' Clerk's responsibilities.
  - iv. Propriety, and the appearance of propriety, are essential to the proper discharge of a Justices' Clerk's and an Assistant Justices' Clerk's

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<sup>1</sup> In the discharge of these responsibilities Justices' Clerks and Assistant Justices' Clerk are also "public bodies" required to act in conformity with the European Convention on Human Rights.

responsibilities and are subject to the proper performance of judicial duties.

- v. Ensuring equality of treatment to all before the law is essential to the proper discharge of a Justices' Clerk's and an Assistant Justices' Clerk's responsibilities.
- vi. Competence and diligence are a pre-requisite to the proper discharge of a Justices' Clerk's and an Assistant Justices' Clerk's responsibilities.

### **Independence**

- 9. In the discharge of their responsibilities, Justices' Clerks and Assistant Justices' Clerks shall ensure that they act and give advice fearlessly, in accordance with the law. To support them in their independence, Justices' Clerks and Assistant Justices' Clerks may both join and support the relevant professional bodies and fora.

### **Impartiality**

- 10. Justices' Clerks and Assistant Justices' Clerks will strive to ensure that in discharging their responsibilities they are seen to be impartial and that their conduct maintains and enhances the confidence of the public, the magistracy, the legal profession and litigants.

### **Integrity**

- 11. Justices' Clerks and Assistant Justices' Clerks will avoid situations that might reasonably lower public confidence in their integrity. Justices' Clerks' and Assistant Justices' Clerks' conduct in discharging their responsibilities will support the confidence of parties and the public in general in the Judicial System. Additionally, Justices' Clerks and Assistant Justices' Clerks will seek to be courteous, patient, and tolerant; respecting the dignity of all.

### **Propriety**

- 12. Justices' Clerks, as members of Bar or the Law Society, are required to act in conformity with their professional Codes of Conduct when giving legal advice to magistrates.
- 13. In addition to their general responsibility to act in accordance with the professions' Codes of Conduct, Justices' Clerks and Assistant Justices' Clerks will particularly avoid impropriety or the appearance of impropriety in the discharge of their duties. To this end, Justices' Clerks and Assistant Justices' Clerks will avoid situations that might reasonably give rise to the suspicion or appearance of favouritism or partiality. Justices' Clerks and Assistant Justices' Clerks will cascade these responsibilities to members of their legal teams.
- 14. Subject to the proper performance of judicial duties and with the appropriate authority in accordance with the conduct policy, Justices' Clerks and Assistant Justices' Clerks may write, lecture, teach and participate in activities concerning the development of law, the legal system and the administration of justice or related matters. Justices' Clerks and Assistant Justices' Clerks should also be

able to participate in public debate to the extent that their participation contributes to the public understanding of the administration of justice and to public confidence in the judiciary. In doing this, however, the individual should be circumspect and ensure that he/she does not enter into political controversy or make any statement, which would suggest that he/she will not impartially administer or advise on the administration of the law as it exists at the time.

### **Competence and Diligence**

15. Justices' Clerks have a professional duty to equip themselves to discharge their duties with a high degree of competence and also to ensure that Assistant Justices' Clerks also discharge their duties with a high degree of competence. Justices' Clerks should ensure that they and Assistant Justices' Clerks generally, operate in conformity with the scheme of Legal Adviser Competences.

### **Supervisory Responsibilities**

16. Justices' Clerks are responsible for both the delegation of judicial functions to and subsequent actions by Assistant Justices' Clerks. In discharging these responsibilities the Justices' Clerk will develop, review and maintain a scheme of delegation that directs Assistant Justices' Clerks with regard to the discharge of their judicial and advisory responsibilities.

### **Performance and Management Functions**

17. In relation to Justices' Clerks' judicial functions, S. 29 of the Courts Act 2003 mandates Judicial Independence. In exercising their managerial responsibilities as members of HMCS Management Teams, Justices' Clerks must comply with their duty to consult their Area Director on decisions affecting business and managerial operations.

**END**

Lord Justice Leveson  
Senior Presiding Judge for England & Wales