

GUIDE TO JUDICIAL CONDUCT

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FOREWORD

This Guide to Judicial Conduct has been drafted by a working group of judges set up by the Judges' Council, under the chairmanship of Lord Justice Pill and published by the Judges' Council following extensive consultation with the judiciary. As Chairman of the Judges' Council I would like to express my gratitude to the working group for their immense generosity in time and effort in producing the Guide.

We are justifiably proud of our existing standards of judicial conduct. However, the recent adoption of written codes of conduct throughout the world and the endorsement of principles by the UN Human Rights Commission at Geneva in April 2003, have indicated that a written Guide for England and Wales would now be desirable and in accord with international practice.

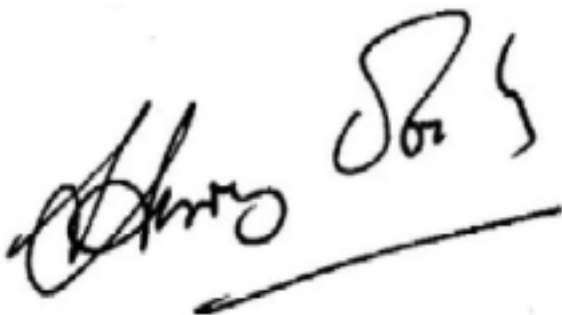
The range of restraints that are inherent in the acceptance of judicial office together with the obligations placed on

judges by the taking of the Judicial Oath, have been taken into account by the working group. However, the responsibilities and the public's perception of the standards to which judges should adhere are continuously evolving. To take but one example, when I came to the Bar it was considered in order for a son to appear before his father. This would be unacceptable today. So this Guide will have to evolve to keep up with these changes.

This Guide is intended to offer assistance to judges on issues rather than to prescribe a detailed code and to set up principles from which judges can make their own decisions and so maintain their judicial independence. I know that it will prove to be a valuable tool in assisting judges to deal with difficult ethical problems with which they will be inevitably faced. As important requirements as to conduct are also set out in each member of the judiciary's Terms and Conditions of Appointment, the Guide must be read in conjunction with those Terms and Conditions.

Although it is primarily aimed at professional full and part time judges, I would hope that the Guide will be of

assistance to all the judiciary, including lay magistrates and tribunal members as well.

A handwritten signature in black ink, appearing to read 'Henry Jones', with a long horizontal flourish underneath.

Chairman of the Judges' Council
Lord Chief Justice of England and Wales

ACKNOWLEDGEMENTS

In November 2002 a copy of the paper ‘Guidelines to Judicial Ethics’ drafted under the auspices of the Judicial Studies Board by a committee chaired by Dame Janet Smith was placed before the Judges’ Council. The assistance derived from this paper is gratefully acknowledged.

The Judges’ Council agreed that a working group should be set up and invited Lord Justice Pill to chair it and to select its members, which he did in consultation with Lord Justice Judge, then Senior Presiding Judge. The members were Mr Justice Gage, Mr Justice McCombe, His Honour Judge Brodrick, Her Honour Judge Eleri Rees and District Judge Michael Walker. The generous time given and invaluable advice received from the working group is gratefully acknowledged.

Consultation on a draft Guide was subsequently carried out with the Court of Appeal and High Court Benches,

the Circuit and District Benches via their respective Council and Association and the comments were collated. Following that consultation the final draft was shown to the Lord Chancellor and he was invited to make any further comments. The generous assistance given by the Secretary to the Council for Her Majesty's Circuit Judges and by the Secretary of the Association of District Judges is gratefully acknowledged together with the assistance given by the Secretary to the Judges' Council, the staff of the Office of the Lord Chief Justice and officials of the DCA and the Court Service throughout the preparation and publication of this Guide.

Grateful thanks are given to all those judges who responded to the consultation and to the Lord Chancellor for his support.

Of the Guides from other jurisdictions to which reference has been made in the Introduction to this Guide, acknowledgement is particularly due to the Australian Chief Justices' document 'Guide to Judicial Conduct', the form and content of which have been a valuable model.

STANDING COMMITTEE ON GUIDE TO JUDICIAL CONDUCT

Following the publication of this Guide in October 2004, the Judges' Council has set up a Standing Committee to keep the Guide under review and to deal with any points of principle that may not be dealt with in the Guide or that may need revision.

The members of the Standing Committee are:

Lord Justice Pill (chairman); Lord Justice Gage; Mrs Justice Macur; Judge Michael Brodrick; Judge Elizabeth Fisher; Mark Rowland, a Social Security Commissioner, as representing tribunals; District Judge Michael Walker.

As appears from its contents, the Guide is intended to offer assistance to judges about their conduct and to set out principles on the basis of which judges can make their own decisions. Consultation with colleagues and with the head of the appropriate jurisdiction, as defined

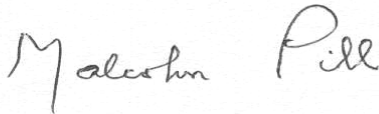
in paragraph 8.2.4 of the Guide (which in the case of tribunal members includes their President or Chairman), is encouraged. That is also encouraged by the Standing Committee, the existence and functioning of which is not designed or intended to cut across or interfere with existing collegiate arrangements. It is certainly not intended that particular situations with which judges are confronted should routinely be referred to the Committee or one of its members.

Where a point of general application or concern arises, however, whether addressed in the Guide or not, it may be appropriate to refer it to the Committee either by a reference to the Secretary of the Committee, who is also Secretary to the Judges' Council, or to the Chairman, or a member of the Committee. The Committee plans to meet at least twice a year, and more frequently if the need should arise.

At such meetings, the Committee will consider, from information available to members, how the guide is working in practice. It will clearly assist them in that task

if judges do refer to the Committee any points of general concern which have arisen. While it is hoped that changes to what are intended to be general principles guiding conduct will not frequently be required, consideration may be given by the Committee to possible additions to and revisions of the contents of the Guide. It is understood that a need for change may be perceived by judges whether or not a specific problem has actually arisen. If that should arise, the Committee would be glad to be told.

Committee members of course hope that the work of the Committee will assist judges in their task of maintaining high standards in the administration of justice.

A handwritten signature in cursive script that reads "Malcolm Pill". The signature is written in dark ink on a light-colored background.

Chairman

GUIDE TO JUDICIAL CONDUCT

1 INTRODUCTION

1.1 Guides to judicial conduct have become commonplace in recent years. As far as Commonwealth countries are concerned, a seminal study by Mr Justice Thomas, a judge of the Supreme Court of Queensland, *Judicial Ethics in Australia* was published in 1988. There have followed many documents including the Canadian Judicial Council's *Ethical Principles for Judges* (1998), a *Guide to Judicial Conduct* published for the Council of Chief Justices of Australia (2002) and a *Code of Conduct for Judicial Officers* of the Federal Republic of Nigeria.

1.2 Having posed the question whether judicial ethics exist as such, Mr Justice Thomas stated:

“We form a particular group in the community. We comprise a select part of an honourable profession. We are entrusted, day after day, with the exercise of considerable power. Its exercise has dramatic

effects upon the lives and fortunes of those who come before us. Citizens cannot be sure that they or their fortunes will not some day depend upon our judgment. They will not wish such power to be reposed in anyone whose honesty, ability or personal standards are questionable. It is necessary for the continuity of the system of law as we know it, that there be standards of conduct, both in and out of court, which are designed to maintain confidence in those expectations.”

(2nd ed. (1997) p9).

- 1.3** On a wider stage, what have become known as the *Bangalore Principles of Judicial Conduct* were initiated in 2001. The *Bangalore* principles arose from a United Nations initiative with the participation of Dato’ Param Cumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers. A draft code of judicial conduct was prepared by a group comprising senior judges from Commonwealth countries. This was discussed at several conferences attended by judges of both common law and civil law systems and has also

been considered by the Consultative Council of European Judges. Revised principles were prepared in November 2002 following a round-table meeting of Chief Justices held at the Peace Palace, The Hague and were endorsed at the 59th session of the United Nations Human Rights Commission at Geneva in April 2003.

1.4 The principles are succinctly stated as six “values” and their stated intention is: “To establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the Executive and Legislature, and lawyers and the public in general, to better understand and support the judiciary”. The principles are:

- (i) Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

- (ii) Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.
- (iii) Integrity is essential to the proper discharge of the judicial office.
- (iv) Propriety, and the appearance of propriety, are essential to the performance of all of the activities of the judge.
- (v) Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.
- (vi) Competence and diligence are prerequisites to the due performance of judicial office.

1.5 In the *Bangalore* guidance, those principles are developed in a series of propositions set out in paragraphs under each of the above headings. In drafting the present guidance, weight has been given and acknowledgement is due to that statement of principles.

1.6 Several preliminary points need to be made.

- 1.6.1 The guidance must in all respects be read against the background of the memorandum on conditions of appointment and terms of service accepted by the judge when assuming office.
- 1.6.2 The primary responsibility for deciding whether a particular activity or course of conduct is appropriate rests with the individual judge and what follows is not intended to be prescriptive, unless stated to be. There may be occasions when the overall interests of justice require a departure from propositions as literally stated in the guide. It is also acknowledged that there is a range of reasonably held opinions on some aspects of the restraints that come with the acceptance of judicial office.
- 1.6.3 Any attempt to set out principles under the *Bangalore* headings leads very quickly to a recognition that the concept of judicial independence is another aspect of judicial integrity and judicial impartiality and that there is substantial overlap between the principles relevant to the application of the values.

1.7 The pattern which follows is that Sections 2 to 6 consider the general principles stated in paragraph 1.4 above with some discussion as to their effect. Principle (vi) is dealt with briefly, for reasons given in Section 6. Principle (v) is fundamental and, given the guidance in other sections, is not thought to require elaboration. Sections 7 to 9 provide guidance on specific topics.

2 JUDICIAL INDEPENDENCE

2.1 Judicial independence is sometimes mistakenly perceived as a privilege enjoyed by judges, whereas it is in fact a cornerstone of our system of government in a democratic society and a safeguard of the freedom and rights of the citizen under the rule of law. The judiciary, whether viewed as an entity or by its individual membership, is and must be seen to be, independent of the legislative and executive arms of government. The relationship between the judiciary and the other arms should be one of mutual respect, each recognising the proper role of the others. Judges should always take care that their conduct, official or private, does not undermine their institutional or individual independence, or the public appearance of independence.

2.2 The judicial oath provides:

“I will do right to all manner of people after the laws and usages of this Realm, without fear or favour, affection or ill-will.”

In taking that oath, the judge has acknowledged that he or she is primarily accountable to the law which he or she must administer.

2.3 The oath plainly involves a requirement to be alert to, and wary of, subtle and sometimes not so subtle attempts to influence judges or to curry favour. Moreover, in the proper discharge of duties, the judge must be immune to the effects of publicity, whether favourable or unfavourable. That does not of course mean being immune to an awareness of the profound effect judicial decisions may have, not only on the lives of people before the court, but sometimes upon issues of great concern to the public, concerns which may be expressed in the media.

2.4 Consultation with colleagues when points of difficulty arise is important in the maintenance of standards. In performing judicial duties, however, the judge shall be independent of judicial colleagues and solely responsible for his or her decisions.

3 IMPARTIALITY

- 3.1** A judge should strive to ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants, in the impartiality of the judge and of the judiciary.
- 3.2** Because the judge's primary task and responsibility is to discharge the duties of office, it follows that a judge should, so far as is reasonable, avoid extra-judicial activities that are likely to cause the judge to have to refrain from sitting on a case because of a reasonable apprehension of bias or because of a conflict of interest that would arise from the activity.
- 3.3** A specific application of that principle is that a judge must forego any kind of political activity and on appointment sever all ties with political parties. An appearance of continuing ties such as might occur by attendance at political gatherings, political fundraising events or through contribution to a political party, should be avoided. The need for

abstinence also involves not participating in public demonstrations which, by associating the judge with a political viewpoint or cause, may diminish his authority as a judge and create in subsequent cases a perception of bias. Where a close member of a judge's family is politically active, the judge needs to bear in mind the possibility that, in some proceedings, that political activity might raise concerns about the judge's own impartiality and detachment from the political process.

- 3.4** Another application of the principle, though one difficult to define and apply in specific situations, is the expression of views out of court that would give rise to issues of perceived bias or pre-judgment in cases that later come before the judge. This question is considered in more detail in Section 8.2.
- 3.5** The question whether an appearance of bias or possible conflict of interest is sufficient to disqualify a judge from hearing a case is the subject of Strasbourg, English and Welsh, and Commonwealth jurisprudence which will guide

judges in specific situations and any attempt to summarise, or comment in detail, would be unhelpful and inappropriate. Recent English cases include *Locobail (UK) Ltd v Bayfield Properties Ltd* [2002] QB 451, *R v Bow Street Magistrates ex parte Pinochet (No.2)* [2000] 1 AC 119, *Re Medicaments and Related Classes of Goods (No.2)*[2001] 1 WLR 700, *M v Islington LBC* [2002] 1 FLR 95 and *Lawal v Northern Spirit Ltd* [2003] UKHL 35.

- 3.6** Circumstances will vary infinitely and guidelines can do no more than seek to assist the judge in the judgment to be made, which involves, by virtue of the authorities, considering the perception the fair-minded and informed observer would have. While the purpose of the guidance is to express general principles, it has been thought appropriate to provide some detail upon issues it is known or believed in practice to cause problems for judges, including fee-paid judges, for example, under the heading personal relationships and perceived bias, Section 7 below.

- 3.7** The guidance applies to fee-paid as well as full-time and part-time judges. Issues specific to fee-paid judges are considered in paragraphs 3.15 to 3.18 below.
- 3.8** If a judge, or to the knowledge of the judge, a member of the judge's family (family as defined below in the *Bangalore* principles) has any significant financial interest in the outcome of the case that will plainly disqualify.
- 3.9** Such an interest may arise without the judge having an interest in the case to be tried if the case is to decide a point of law which may affect the judge in his personal capacity. In taking the decision whether to hear the case, the judge should have regard, in relation to the point of law, to the nature and extent of his or her interest, and the effect of the decision on others with whom he or she has a relationship, actual or foreseeable. (As to the judge's position as a taxpayer see Section 14 of the Supreme Court Act 1981).

- 3.10** If a judge is known to hold strong views on topics relevant to issues in the case, by reason of public statements or other expression of opinion on such topics, possible disqualification of the judge may have to be addressed, whether or not the matter is raised by the parties. The risk will arise if a judge has taken part publicly in a controversial or political discussion. It will seldom, if ever, arise from what a judge has said in other cases.
- 3.11** Judges should, however, be careful to avoid giving encouragement to attempts by a party to use procedures for disqualification illegitimately. If the mere making of an insubstantial objection were sufficient to lead a judge to decline to hear a case, parties would be encouraged to attempt to influence the composition of the bench or to cause delay and the burden on colleagues would increase. A previous finding or previous findings by the judge against a party, including findings on credibility, will rarely provide a ground for disqualification. The possibility that the judge's comments in an earlier case, particularly if offered gratuitously,

might reasonably be perceived as personal animosity, cannot be excluded but the possibility should occur, and is likely to occur, only very rarely.

3.12 If circumstances which may give rise to a suggestion of bias, or appearance of bias, are present so that they are to be disclosed to the parties, that should be done well before the hearing, if possible. Case management procedures will often enable this to be achieved. Disclosure, if followed by recusal, on the day of the hearing will almost certainly involve additional costs for the parties and will frequently cause listing difficulties. It must, however, be acknowledged that listing arrangements in many courts will be such that advance notification may often not be possible and disclosure only on the day of the hearing will be appropriate and sometimes inevitable. The judge should bear in mind the difficult position in which parties, and their advisers, are placed by disclosure on the day of hearing, when making a decision whether to proceed.

- 3.13** Disclosure should of course be to all parties and, save when the issue has been resolved by correspondence before the hearing, discussion between the judge and the parties as to what procedure to follow should normally be in open court, unless the case itself is to be heard in chambers. The consent of the parties is a relevant and important factor but the judge should avoid putting them in a position in which it might appear that their consent is sought to cure a ground of disqualification. Even where the parties consent to the judge sitting, if the judge, on balance, considers that recusal is the proper course, the judge should so act. Conversely, there are likely to be cases in which the judge has thought it appropriate to bring the circumstances to the attention of the parties but, having considered any submissions, is entitled to and may rightly decide to proceed notwithstanding the lack of consent.
- 3.14** A judge is entitled to keep in mind his general duty to try the cases in his or her list and the listing burden and delay which may be occasioned by a

recusal. Moreover, it must be recognised that the urgency of the situation may be such that a hearing is required in the interests of justice notwithstanding the existence of arguable grounds in favour of disqualification.

Fee-paid judges

- 3.15** As their terms of appointment provide, fee-paid judges are expected to refrain from any activity, political or otherwise, which could conflict with their judicial office or be seen to compromise their impartiality.
- 3.16** A fee-paid judge has the same general obligation to maintain the status and dignity of the office of judge and to be alert to the possibility that outside activities, including political activities, may create a perception of bias when dealing with particular cases. Judgment is required in striking a balance between maintaining that status and dignity and the reasonable requirements of a legal practice or, in the case of lay fee-paid judges, the reasonable requirements of other employment and activities.

- 3.17** The fee-paid judge has additional factors to consider when making a decision as to recusal. The ban on party political activity does not apply to that judge who must therefore consider whether the nature and extent of the political activity would create a perception of unfairness in the particular case. The fee-paid judge may also, by virtue of professional practice, have links with chambers, professional firms and other parties which make it inappropriate for him or her to hear a case involving them or their clients.
- 3.18** The link need not be that of lawyer and client; a solicitor deputy district judge, for example, might not consider it appropriate to sit in judgment in cases involving a firm in professional competition with that fee-paid judge in the same district. By way of a further example, a fee-paid judge who is a barrister may have concerns about a member of his or her chambers who has entered into a conditional fee arrangement appearing before him or her. At many venues, the risk of recusal in civil proceedings is such that it is undesirable for a fee-

paid judge to sit in the place of his or her legal practice.



4 INTEGRITY

4.1 As a general proposition, judges are entitled to exercise the rights and freedoms available to all citizens. While appointment to judicial office brings with it limitations on the private and public conduct of a judge, there is a public interest in judges participating, insofar as their office permits, in the life and affairs of the community. Moreover, it is necessary to strike a balance between the requirements of judicial office and the legitimate demands of the judge's personal and family life. Judges have to accept that the nature of their office exposes them to considerable scrutiny and puts constraints on their behaviour which other people may not experience. Judges should avoid situations which might reasonably lower respect for their judicial office or might cast doubt upon their impartiality as judges. They must also avoid situations which might expose them to charges of hypocrisy by reason of things done in their private life. Behaviour which might be regarded as merely unfortunate if engaged in by someone who is not a

judge might be seen as unacceptable if engaged in by a person who is a judge and who, by reason of that office, has to pass judgment on the behaviour of others.

4.2 A judge's conduct in court should uphold the status of judicial office, the commitment made in the judicial oath and the confidence of litigants in particular and the public in general. The judge should seek to be courteous, patient, tolerant and punctual and should respect the dignity of all. The judge should ensure that no one in court is exposed to any display of bias or prejudice on grounds said in the *Bangalore* principle entitled "equality" to include but not to be limited to "race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes". There should be no bias or prejudice on those grounds, which are described in the principles as "irrelevant grounds". In the case of those with a disability care should be taken that arrangements made for and during a Court hearing do not put them at a

disadvantage. Further guidance is given in the JSB Equal Treatment Bench Book. The duty of course remains on the judge to apply the law as it relates to allegedly discriminatory conduct.

5 PROPRIETY

5.1 This principle, one of the *Bangalore* principles, does not appear as a heading in earlier guides mentioned, though the concept influences their contents. As a general statement of the conduct to be expected of a judge, the section (Section 4) of the *Bangalore* principles under this heading is admirable and appropriate to be adopted as guidance. It is set out in full and without comment. Some of the guidance is so obvious that inclusion may appear unnecessary, but the statement is a useful and general reminder and will assist judges in applying the principles stated in the guide. Paragraph 12 does not of course apply to fee-paid judges.

- (1) A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- (2) As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a

judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

- (3) A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- (4) A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- (5) A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.
- (6) A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

- (7) A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.
- (8) A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
- (9) A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
- (10) Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
- (11) Subject to the proper performance of judicial duties, a judge may:

- (11.1) Write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
 - (11.2) appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
 - (11.3) serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or
 - (11.4) engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
- (12) A judge shall not practise law whilst the holder of judicial office.
- (13) A judge may form or join associations of judges or participate in other organisations representing the interests of judges.

- (14) A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.
- (15) A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
- (16) Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

5.2 "Judge's family" is defined in the statement of principles as:

“... a judge’s spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge’s household.” and

“Judge’s spouse” includes:

“a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.”

6 COMPETENCE AND DILIGENCE

6.1 As Lord Bingham of Cornhill stated in his 1993 lecture to the Society of Public Teachers of Law, entitled *Judicial Ethics*:

“It is a judge’s professional duty to do what he reasonably can to equip himself to discharge his judicial duties with a high degree of competence.”

Plainly this requires the judge to take reasonable steps to maintain and enhance the judge’s knowledge and skills necessary for the proper performance of judicial duties, to devote the judge’s professional activity to judicial duties and not to engage in conduct incompatible with the diligent discharge of such duties.

6.2 Beyond stating those general propositions, it is not seen as the function of this guide to consider judicial duties and practice with respect, for example, to case management, the timing and style of judgments and what is required of a judge by way of attendance at judicial seminars. These topics are better dealt with, insofar as they are not

prescribed in rules of court and in the cases, by
guidance from Heads of Division.

SECTIONS 7 TO 9 - INTRODUCTION

Principles and aspirations having been expressed, the guide considers a number of specific problems the judge, including the fee-paid judge, may have to consider, always within the framework of the law and the guiding principles. Plainly all judges should keep up with the state of the law in this area.

7 PERSONAL RELATIONSHIPS AND PERCEIVED BIAS

- 7.1** This is a subject on which the situations which may arise are so varied that great reliance must be placed on the judgment of the judge, applying the law, his or her judicial instincts and conferring with a colleague where possible and appropriate. The judgment of the Court of Appeal in *Locabail (U.K) Ltd v Bayfield Properties Ltd* (mentioned in paragraph 3.5) provides authoritative guidance (see particularly paragraph 25). Relevant relationships may exist with parties to litigation, legal advisers or representatives of parties, and witnesses.
- 7.2** There are few hard and fast rules. Signposts for guidance, in some of the situations which may arise, are provided in this section and in Section 8:
- 7.2.1** A judge should not sit on a case in which the judge has a close family relationship with a party or the spouse or domestic partner of a party.
- 7.2.2** Personal friendship with, or personal animosity towards, a party is also a compelling reason for

disqualification. Friendship may be distinguished from acquaintanceship which may or may not be a sufficient reason for disqualification, depending on the nature and extent of such acquaintanceship.

7.2.3 A current or recent business association with a party will usually mean that a judge should not sit on a case. A business association would not normally include that of insurer and insured, banker and customer or council taxpayer and council. Judges should also disqualify themselves from a case in which their solicitor, accountant, doctor, dentist or other professional adviser is a party in the case.

7.2.4 Friendship or past professional association with counsel or solicitor acting for a party is not generally to be regarded as a sufficient reason for disqualification.

7.2.5 The fact that a relative of the judge is a partner in, or employee of, a firm of solicitors engaged in a case before the judge does not necessarily require disqualification. It is a matter of considering all the

circumstances, including the extent of the involvement in the case of the person in question.

- 7.2.6 Past professional association with a party as a client need not of itself be a reason for disqualification but the judge must assess whether the particular circumstances could create an appearance of bias.
- 7.2.7 Where a witness (including an expert witness) is personally well known to the judge all the circumstances should be considered including whether the credibility of the witness is in issue, the nature of the issue to be decided and the closeness of the friendship.
- 7.2.8 A judge should not sit on a case in which a member of the judge's family (as defined in the *Bangalore* principles) appears as advocate.

8 ACTIVITIES OUTSIDE THE COURT

8.1 *The Media*

8.1.1 Judges should exercise their freedom to talk to the media, with ‘the greatest circumspection’. Lord Bingham has commented that ‘a habit of reticence makes for good judges’. A judge should refrain from answering public criticism of a judgment or decision, whether from the bench or otherwise. Judges should not air disagreements over judicial decisions in the press. In his speech in the House of Lords on 21 May 2003, Lord Woolf CJ referred to “the very important convention that judges do not discuss individual cases”.

8.1.2 Guidance as to how to react when a judge is factually misrepresented or where the judge is aware, particularly when sentencing in a criminal case, that remarks could be misinterpreted by reporters, is contained in the document “*The Media: a Guide for Judges*”, first published by the Lord Chancellor’s Department in July 2000.

8.2 *Participation in Public Debate*

- 8.2.1 However, and subject to the above, many aspects of the administration of justice and of the functioning of the judiciary are the subject of necessary and legitimate public consideration and debate in the media, legal literature and at public meetings, seminars and lectures, and appropriate judicial contribution to this consideration and debate can be desirable. It may contribute to the public understanding of the administration of justice and to public confidence in the judiciary. At the least, it may help to dispel misunderstandings and correct false impressions. There is no objection to such participation provided the issue directly affects the operation of the courts, the independence of the judiciary or aspects of the administration of justice.
- 8.2.2 Care should, however, be taken about the place at which, and the occasion on which, a judge speaks so as not to cause the public to associate the judge with a particular organisation, group or cause. The participation should not be in circumstances which may give rise to a perception of partiality towards

the organisation (including a set of chambers or firm of solicitors), group or cause involved or to a lack of even handedness.

8.2.3 Moreover, it should be borne in mind that the dialogue may not take the form, and the judge cannot expect to assume the role, which the judge would consider appropriate in court proceedings. The judge cannot expect to join in and leave the debate on the judge's terms. The risk of different judges expressing conflicting views in debate must also be borne in mind in that a public conflict between judges, expressed out of court, may bring the judiciary into disrepute and diminish the authority of the court.

8.2.4 There are plainly risks in a judge, whether exercising a criminal or a civil jurisdiction, who may have to deal with a wide range of people in his or her jurisdiction, being exposed to public debate in such a way that the authority and status of the judicial office may be undermined. Consultation with Heads of Division, the presiding, resident or designated judge, as the case may be (the "head of

the appropriate jurisdiction”), will almost always be desirable. The risk of expressing views that will give rise to issues of bias or pre-judgment in cases that later come before the judge must also be considered.

8.2.5 Participation in public protests and demonstrations may well involve substantial risks of the kind already considered and be inconsistent with the dignity of judicial office

8.3 *Commercial Activities*

8.3.1 The requirements of office clearly place severe restraints upon the permissible scope of a judge’s involvement with commercial enterprises. Guidance appears in the cases as to the extent to which a judge is entitled to pursue commercial activities and further detailed guidance, save by reference to the cases, is inappropriate in this document. Reference to the judge’s terms of service is appropriate.

8.3.2 The management of family assets and the estates of deceased close family members, whether as executor or trustee, is unobjectionable, and may be acceptable for other relatives or friends if the administration is not complex, time consuming or contentious. However, the risks, including the risk of litigation, associated with the office of trustee, even of a family trust, should not be overlooked and the factors involved need to be weighed carefully before office is accepted.

8.4 *Involvement in Community Organisations*

8.4.1 Prior to their appointment, many judges have been actively involved in community organisations, particularly, but not exclusively, educational, charitable and religious organisations. While continuing such involvement is not necessarily inappropriate, and may confer a public benefit, care should be taken that it does not compromise judicial independence or put at risk the status or integrity of judicial office. Such activities should not be so onerous or time consuming as to interfere with the judge's performance of his or her duties

and the judge's role should not involve active business management.

8.4.2 Judges may properly be involved in the management of educational, charitable and religious organisations and trusts subject to the reservation already stated in relation to community organisations. Care should be taken in considering whether, and if so to what extent, a judge's name and title should be associated with an appeal for funds, even for a charitable organisation. It could amount to an inappropriate use of judicial prestige in support of the organisation and may also be seen as creating a sense of obligation to donors. There will be occasions, for example in the case of charities supporting the work of the Courts, where the objection would not apply.

8.4.3 Many judges hold or have held high office in governing bodies of universities and similar institutions without embarrassment notwithstanding that the management and funding structures of such organisations are complex, and are often the subject of public debate and political controversy. It is

necessary to limit and regulate the nature and extent of personal involvement in contentious situations. Moreover, in considering whether to accept office and what role to play, consideration should be given to the trend of some such bodies to be more entrepreneurial and to resemble a business. The greater the move in that direction, the less appropriate judicial participation may be. Any conflict of interest in a litigious situation must of course be declared.

8.5 *References*

- 8.5.1 There is no objection in principle to a judge giving references for character or professional competence for persons who are well known to the judge. Consideration should be given as to whether the judge is the appropriate person to give the reference requested, the principle being that someone should not be deprived of a reference because the person best able to give it is the judge. Plainly judges should guard against inappropriate requests.
- 8.5.2 Giving character evidence in court or otherwise is not excluded, particularly where it may seem unfair

to deprive the person concerned of the benefit of such evidence, but the task should be undertaken only exceptionally because of the risks inherent in the judge entering the arena, albeit for a limited purpose, and the pressure such evidence may put on the trial judge or magistrate. Consultation with the head of the appropriate jurisdiction is advisable before taking a decision to give evidence.

8.6 *Remuneration*

8.6.1 Provisions are stated in the terms of service. Moreover, by virtue of section 75 and Schedule 11 of the Courts and Legal Services Act 1990 judges holding full-time appointments are barred from legal practice. In addition to a judicial salary, a full-time judge should not receive any remuneration except for fees and royalties earned as an author or editor. A judge may of course receive money from investments or property.

8.7 *Business cards etc*

8.7.1 It is not appropriate for someone who sits as a deputy high court judge, a recorder or as a deputy

district judge, to describe him or herself as such on a business card, cheque book or letterhead. Entries of a biographical nature in, for example, a firm's or chambers' brochure, are acceptable.

8.8 *Gifts, Hospitality and Social Activities*

8.8.1 *Gifts and Hospitality.* Caution should be exercised when considering whether to accept any gift or hospitality that may be offered. It is necessary in this context to distinguish between accepting gifts and hospitality unrelated to judicial office, for example from family and close friends, and gifts and hospitality which in any way relate, or might appear to relate, to judicial office. In relation to the latter category, judges should be on their guard against any action which could be seen to undermine their impartiality. Judges should be wary, therefore, of accepting any gift or hospitality which might appear to relate in some way to their judicial office and might be construed as an attempt to attract judicial goodwill or favour.

8.8.2 The acceptance of a gift or hospitality of modest value, as a token of appreciation, may be unobjectionable, depending on the circumstances. For example a judge who makes a speech or participates in some public or private function should feel free to accept a small token of appreciation. It may include a contribution to charity in the manner explained in the Memorandum on Conditions of Appointment and Terms of Service (October 2000).

“The Lord Chancellor regards it as inappropriate for a judge to receive a fee personally for giving a lecture. However, where a judge gives a lecture for a commercial undertaking there is no objection, if he considers that it would be appropriate, to his requesting that any fee otherwise payable be paid to a charity of his choice. To avoid any liability for tax, a judge should try to ensure that payment is made direct to the charity. Where this is not possible, e.g. accounting reasons, and the charity would otherwise lose out, a judge may accept the payment himself, provided that he is prepared to

pay the tax on that sum and make the payment directly to the charity himself. There is no objection to a judge accepting reimbursement of the cost of any necessary travel and accommodation necessitated by attending a suitable lecture, conference or seminar.”

8.8.3 By way of further example, the acceptance of invitations to lunches and dinners by legal and other professional and public bodies or officials, where attendance can be reasonably seen as the performance of a public or professional duty, carrying no degree of obligation, is entirely acceptable.

8.8.4 Caution should be exercised when invited to take part in what may be legitimate marketing or promotional activities, for example by barristers’ chambers or solicitors’ firms, or professional associations, where the object of judicial participation may be perceived to be the impressing of clients or potential clients.

- 8.8.5 It is also axiomatic that judges must not exploit the status and prestige of judicial office to obtain personal favours or benefits.
- 8.8.6 Where a judge is in doubt as to the propriety of accepting any gift or hospitality he or she should seek the advice of the head of the appropriate jurisdiction.
- 8.8.7 *Contact with the Profession.* There is a long-standing tradition of association between bench and the bar and the solicitors' profession. This occurs both on formal occasion, such as dinners, and less formal ones. One caveat has already been stated in paragraph 8.8.4. Another caveat to maintaining a level of social friendliness with the profession, one dictated by common sense, is to avoid direct association with individual members of the profession who are engaged in current or pending cases before the judge. There will be cases in which retaining too close a social relationship with a practitioner who regularly has litigation before the judge's court may create a perception of bias but

the particular circumstances, which will vary widely, must be addressed.

8.8.8 ***Other Social Activities.*** Social activities need to be assessed in the light of the judge's duty to maintain the dignity of the office and not to permit associations which may affect adversely the judge's ability to discharge his or her duties.

8.9 *Use of Equipment*

8.9.1 A judge should not use equipment, including IT equipment, provided by the Court Service for his or her use as a judge, for other purposes which could bring the judge or the judiciary in general into disrepute. Detailed guidance upon the use of IT equipment, including the importance of not compromising its security, has been issued in the form of a policy statement approved by the Judges' Council.

8.10 *Reporting Minor Offences*

8.10.1 Judges should follow the Guidance issued by the Lord Chief Justice in December 2007. These have

been issued following agreement with the Lord Chancellor. They appear at Appendix 1.

9 AFTER RETIREMENT

- 9.1** The conditions of appointment to judicial office provide that judges accept appointment on the understanding that following the termination of their appointment they will not return to private practice as a barrister or a solicitor and will not provide services, on whatever basis, as an advocate in any court or tribunal in England and Wales or elsewhere, including any international court or tribunal, in return for remuneration of any kind, or offer or provide legal advice to any person. The terms of appointment accept that a former judge may provide services as an independent arbitrator/mediator and may receive remuneration for lectures, talks or articles.
- 9.2** Even in retirement a former judge may still be regarded by the general public as a representative of the judiciary and any activity that might tarnish the reputation of the judiciary should be avoided.

Appendix 1

Reference paragraph 8.10

To all Judiciary in England and Wales:

Guidance for Judicial Office Holders on Reporting Minor Offences

I am writing to bring to your attention the new guidance governing the requirements to report minor offences.

There is currently a disparity between magistrates and other judicial office holders in the requirement to report minor motoring offences, such as fixed penalty notices for speeding. In short, whilst magistrates are required to report all offences, other members of the judiciary, including Judges of the High Court, Circuit Judges and District Judges are not required to

report minor motoring offences, except where there are aggravating circumstances.

Following discussions at the Arden working group, when it considered the new disciplinary system, it was agreed with Lord Falconer that the position of magistrates and other judicial office holders be brought into line. The Judges Council subsequently proposed that the requirements for magistrates be relaxed to bring them into line with other judicial office holders, a proposal that Jack Straw has now agreed to. The new reporting requirements also deal for the first time with disposals such as ASBOs, which are not included in existing arrangements. Whilst it is of course extremely unlikely that some of these requirements will ever arise, the guidance is intended to be exhaustive.

The reporting requirements are now as follows:

- Road Traffic offences need only be reported if on conviction:
 - any period of disqualification from holding or obtaining a driving licence is imposed, or,
 - six penalty points are ordered to be endorsed on the licence, or,
 - if a lesser number of points are ordered to be endorsed, the total points then endorsed on the licence exceeds six.

- Speed awareness courses, penalty charge notices for parking etc and fixed penalty notices for matters such as littering need not be reported.

- Penalty notices for disorder must be reported, given the public order element, as must cannabis warnings, given the involvement of drugs.

- Anti Social Behaviour Orders must be reported, including those imposed in civil proceedings.

- All forms of formal recorded caution (i.e. those given by the police on an admission of guilt of the offence being cautioned) must be reported.

- Judicial office holders should judge out of court disposals and any new penalty alongside this framework in determining whether or not any other matter needs to be reported.

These guidelines are in line with the advice that the Association of District Judges and Council of Circuit Judges currently give in response to queries from their members.

Please base your decisions on whether to report minor offences on these new guidelines from now on.

Guide to Judicial Conduct