



PRESIDENT OF THE  
FAMILY DIVISION

## **President's Guidance Judicial Cooperation with Serious Case Reviews**

**Dated 2 May 2017**

1. It is apparent that there is widespread misunderstanding as to the extent to which judges (which for this purpose includes magistrates) can properly participate in Serious Case Reviews (SCRs). The purpose of this Guidance is to clarify the position and to explain what judges can and cannot do.
2. This guidance applies to all judges sitting in the Family Division or the Family Court, including Magistrates and, where exercising judicial functions, Legal Advisers.
3. Judges should provide every assistance to SCRs which is compatible with judicial independence. It is, however, necessary to be aware that key constitutional principles of judicial independence, the separation of powers and the rule of law can be raised by SCRs.

### *Background*

4. From time to time, judges are asked to participate in various ways in SCRs following the death of a child where there has been contact with Local Authority Children's Services. SCRs are conducted by Local Safeguarding Children Boards (LSCBs). These are statutory bodies, established by the Children Act 2004, with chairs independent of the Local Authority they scrutinise – usually a senior social work manager from another Local Authority.
5. On occasions LSCBs have written to judges after child deaths to request either an interview or the completion of an Independent Management Review (IMR). An IMR is a detailed review of an agency's involvement with a child and is one of the principal means of capturing information for use in SCRs. Sometimes LSCBs write with a list of specific questions which they invite the judge to answer. Some LSCBs have written to request that judges attend before them to answer questions in evidence sessions.

## *Position of judges*

6. For important constitutional reasons, judicial participation in SCRs must be limited: therefore, judges do not respond to questions from SCRs, or requests from SCRs to complete IMRs, do not attend evidence sessions or other meetings with SCRs and are under no obligation to provide information to SCRs.
7. The judiciary takes this stance, not because it wishes to evade scrutiny or accountability, but in order to protect its independence and the independence of individual judges.
8. Judicial independence is a fundamental principle, of key importance to both the constitutional separation of powers and the rule of law. The judiciary and individual judges must be independent of and protected from potential encroachment by the executive. And individual judges, in the exercise of their judicial functions, must be, and are, free from direction or management by other judges. Thus neither the judiciary nor the senior judiciary nor the relevant Head of Division (in this instance, the President of the Family Division) has any right to intervene in or any responsibility for the decision of a judge in a particular case. The responsibility is, and must be, that of the individual judge, subject of course to review by an appellate court.
9. Sir Mark Potter P took the view that seeking to ask judges to explain their judgments outside the court arena to bodies of officials was incompatible with judicial independence.<sup>1</sup> If a Local Authority is dissatisfied with a judgment, then its remedy is to appeal. He relied upon the principle that the judgment should speak for itself and that judges should not be asked to explain the reasons why they made their decisions outside the judgment.

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<sup>1</sup> Sir Mark Potter P, who first established the judicial position in relation to SCRs, expressed the issue in the following terms:

*“The question of whether and how far the judiciary can be engaged in the serious case review process needs careful consideration, if only because there are questions of judicial independence involved. Such independence may be put at risk if judges are seen to be participants in a review conducted by a government or local authority agency, which is often based on non-disclosable confidential information, and which deals with far wider questions than those which may have preoccupied the Court at any particular stage.*

*The role of the judge in the overall history of a case ... is a restricted one; its propriety is normally only open to investigation through the appellate or judicial complaints process and not by departmental or local authority review. Further, whether any general guidance to judges is appropriate following a serious case review is a question for the President rather than the department or authority concerned.*

*It is also the case that, outside the confines of the issues before the Court in particular proceedings, it is no part of the duty or function of the judiciary to review or comment upon the actions of social workers or other agencies concerned with safeguarding children. That said, however, while there can be no duty upon the Court to assist if ... a judicial decision may have played a material part in the handling and eventual outcome of a case which has ended in tragedy, it is plainly desirable as a general proposition that the review should be acquainted with the course of the proceedings and the material upon which the Court came to its conclusion.”*

10. The judiciary is not an agency in the same way that local authorities or the police are agencies. Nor is an individual judge. Judges have a distinct constitutional role and function. It is a fundamental principle that judges do not comment on the decisions of other judges outside the appellate process. This is why it would be inappropriate for an IMR of a judicial decision to be conducted; it would, effectively, be one judge (or group of judges) commenting upon the decisions of another judge outside the proper appellate process. It would be even less appropriate for an official (including for this purpose an official in the Judicial Office or in the Judicial Press Office) to seek to comment on a judicial decision. This principle evolved in order to protect the rule of law – it reinforces the idea that the only way to challenge a judicial decision is to do so in court, not to seek to undermine it outside the court process.
11. This position on SCRs has been followed by Sir Mark's successors, Sir Nicholas Wall P and, in turn, by me.
12. If a LSCB writes to a judge to ask them to participate in a SCR it is important to bring this to the attention of the President's Office immediately.<sup>2</sup> The President's Office will then be in a position to assist and advise and to deal with all correspondence with the LSCB.

#### *Position of HMCTS*

13. It is important to note that the judiciary and Her Majesty's Courts and Tribunal Service (HMCTS) are entirely separate and distinct. HMCTS is the administrative arm of the courts and tribunals. It has, and a matter of constitutional principle must have, no involvement in or responsibility for judicial decision-making, which is the exclusive responsibility of the individual judge.
14. For this reason, it is of the highest importance to be clear that where HMCTS decides to complete an IMR as part of a SCR this can be appropriate only in so far as it relates to administrative matters. It can never be appropriate for an IMR to be carried out by HMCTS, or any other officials, of a judicial decision.

#### *Provision of documents*

15. In principle, it is appropriate, unless there are highly exceptional reasons why this should not be so, for a SCR to have access to (a) all material that the judge had access to in hearing the case, including all expert reports, (b) transcripts of the proceedings, (c) all court orders and (d) transcripts of all judgments. Therefore, the proper response to any request for information from a LSCB or SCR is to make available copies of all such documents, though not copies of the judge's notes. This can be done either by copying the contents of the court file or, preferably, the judge's trial bundle if still available. Where a transcript

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has to be prepared, it should be supplied on the payment of any fee required.

16. Documents will be supplied subject to an undertaking that any reporting restrictions in place (for example to protect the identity of any surviving siblings) are to be respected in the final report of the SCR.

*Learning lessons*

17. The President of the Family Division considers carefully all SCRs that come to his attention. If the President takes the view that the findings of a SCR raise issues for the family judiciary that should be addressed through a President's Practice Direction or President's Guidance, then he will issue an appropriate Practice Direction or Guidance.

Sir James Munby, President of the Family Division