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COURTS AND  
TRIBUNALS JUDICIARY

# Guide to Judicial Conduct

March 2020

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## Foreword

The Senior President of Tribunals and I are pleased to authorise this revision of the Guide to Judicial Conduct.

The Guide was first published in 2003 and was the result of extensive work by a working group of judges set up by the Judges' Council, under the chairmanship of Lord Justice Pill. The intention was not to prescribe a detailed code but to offer assistance to judges on the types of issues they might encounter and to set out principles from which they could make their own decisions and so maintain their judicial independence.

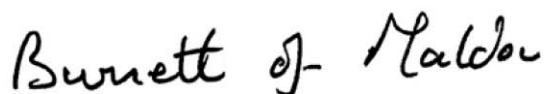
Much has happened since 2003. The Constitutional Reform Act of 2005 removed many of the powers historically held by the Lord Chancellor and transferred them to the Lord Chief Justice, giving him responsibility, as Head of the Judiciary, for the welfare, training and guidance of the judiciary of England and Wales. The Tribunals Courts and Enforcement Act 2007 created the office of Senior President of Tribunals with similar responsibility for the tribunals judiciary, including those in Scotland and Northern Ireland who fall within his remit. The Lord Chief Justice and the Senior President have responsibility for some 24,000 salaried and fee-paid judges, members and magistrates in courts and tribunals. In addition, the Lord Chief Justice shares with the Lord Chancellor a disciplinary responsibility in respect of Coroners.

Changes have also occurred in wider aspects of judicial and public life. The Equality Act of 2010 has underlined the importance of equality and fairness of treatment inherent in the judicial oath. Increased media interest in the judiciary and the legal process has intensified public scrutiny of judicial conduct and decision making. And the rise of social media has presented new questions and concerns for which guidance is required.

This revision is in response to these changes. It is set out in a clear and logical fashion, incorporating guidance for all judicial officeholders, including coroners, and addressing the various issues that have arisen over the past few years.

What remains the same, however, is the basic set of principles guiding judicial conduct. Judicial independence, impartiality and integrity provide judges with a guide, not only as to the way they discharge their judicial functions, but also as to how they conduct their private lives to the extent that this affects their judicial role. They remain at the heart of this Guide and at the centre of every judicial officeholder's conduct.

We are very grateful to Lady Justice Asplin and to the Judicial HR Committee for putting this revision together and to the officials from the Judicial Office who have supported them. We hope everyone will find it a valuable resource.



**Lord Burnett of Maldon Sir Ernest Ryder Lord Chief Justice of England and Wales Senior President of Tribunals**

# Part 1: Introduction

## Opening remarks

This Guide is intended to offer assistance to judges, coroners and magistrates<sup>1</sup> about their conduct.

It is based on the principle that responsibility for deciding whether or not a particular activity or course of conduct is appropriate rests with each individual judge.

This Guide is therefore not a code, nor does it contain rules other than where stated. Instead, it contains a set of core principles which will help judges reach their own decisions.

In cases of difficulty or uncertainty, however, judges should always seek advice from the relevant leadership judge.<sup>2</sup>

## To whom does the Guide apply?

### Serving judges

The Guide applies to all judges in courts and tribunals, whether salaried or fee-paid, legal or nonlegal. This includes magistrates and reserved tribunals' judiciary operating in Scotland and Northern Ireland. It also applies to coroners.

Where the officeholder's status requires a different approach, the position is made clear.

### Retired judges and magistrates

A retired judge may still be regarded by the general public as a representative of the judiciary. Retired judges should exercise caution and are encouraged therefore to refer to this guidance so as to avoid any activity that may tarnish the reputation of the judiciary.

Retired magistrates remain subject to the Declaration and Undertaking signed on appointment.

## How does the Guide apply?

- This Guide must be read against the background of:
- The Terms of Appointment and Conditions of Service to which all salaried and fee-paid judges in courts and tribunals are subject.
- The Declaration and Undertaking which all magistrates sign on appointment.

In addition:

- Some restrictions on judicial choices are contained in statute. Section 75 of the Courts and Legal Services Act 1990 bars certain judges from legal practice.
- Further guidance for magistrates is contained in the Useful Information for Magistrates

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<sup>1</sup> For the ease of reference, the term 'judge' is used throughout and applies equally to all judges, coroners and magistrates unless otherwise stated.

<sup>2</sup> The Heads of Division, the Senior Presiding Judge, Presiding Judges, Family Division Liaison Judges, Supervising Chancery Judges, Resident Judges, Designated Civil and Family Judges, Senior District Judge (Chief Magistrate); and Chamber Presidents or Regional judge, as appropriate; Chief Coroner; and Bench Chairs.

document available on the judicial intranet<sup>3</sup> and guidance on specific issues issued from time to time by the Senior Presiding Judge.

- The Lord Chief Justice may from time to time ask the Chief Coroner to amplify certain aspects of the Guide in relation to coroners.

### **Rules and regulations of other professional bodies**

Fee paid judges are likely to be members of a professional association which may have its own set of rules and regulations. Where those have legal force, in the unlikely event of a conflict with this Guide, they take precedence.

### **Discipline**

The Lord Chancellor and Lord Chief Justice exercise disciplinary powers under Part 4 of the Constitutional Reform Act 2005 over all courts and tribunals judges, magistrates and coroners.

The Judicial Conduct Investigations Office (JCIO) is established by Regulations made under the 2005 Act to assist in the handling of complaints. While the JCIO in handling complaints, and the Lord Chancellor and Lord Chief Justice in exercising their disciplinary powers, may choose to have regard to this Guide, they are not obliged to follow it. Information about the JCIO and relevant regulatory functions can be found on the [JCIO website](#).

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<sup>3</sup> <https://intranet.judiciary.uk/wp-content/uploads/2020/09/MAGISTRATE-INFO-FINAL.v2-Amended-with-LCJ-and-LC-sigs.pdf>

## Part 2: Guiding principles

There are three basic principles guiding judicial conduct.

- Judicial independence
- Impartiality
- Integrity

These principles provide judges with a guide both as to the way in which they discharge their judicial functions and as to the conduct of their private lives to the extent that it affects those functions.

They are a distillation of the six fundamental values set out in the Bangalore Principles of Judicial Conduct that were endorsed at the 59th session of the United Nations Human Rights Commission at Geneva in April 2003 and which form the key statement on judicial ethics<sup>4</sup>.

### Judicial Independence

Judicial independence is 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 must be seen to be independent of the legislative and executive arms of government both as individuals and as a whole.

Judges should bear in mind that the principle of judicial independence extends well beyond the traditional separation of powers and requires that a judge be, and be seen to be, independent of all sources of power or influence in society, including the media and commercial interests.

Judges 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.

### Impartiality

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 acknowledges that he or she is primarily accountable to the law which he or she must administer. Coroners and some fee paid judges do not take the judicial oath, but they too are primarily accountable to the law which they administer.

Judges should strive to ensure that their conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants, in their personal impartiality and that of the judiciary.

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<sup>4</sup> The six principles are: independence, impartiality, integrity, propriety, equality and competence and diligence. The Bangalore Principles 2002 can be found in full at [http://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf)

It follows that judges should, so far as is reasonable, avoid extra-judicial activities that are likely to cause them to have to refrain from sitting because of a reasonable apprehension of bias or because of a conflict of interest that would arise from the activity.

The question whether an appearance of bias or possible conflict of interest is sufficient to disqualify an officeholder from hearing a case is the subject of Strasbourg, English and Welsh and Commonwealth jurisprudence. 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 *Lamal v Northern Spirit Ltd* [2003] UKHL 35.

Circumstances will vary infinitely and guidelines can do no more than seek to assist judges in reaching their own decisions.

## Integrity

Judges are expected to put the obligations of judicial office above their own personal interests.

In practical terms, this means that judges are expected to display:

- Intellectual honesty
- Respect for the law and observance of the law
- Prudent management of financial affairs
- Diligence and care in the discharge of judicial duties
- Discretion in personal relationships, social contacts and activities

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. He or she should ensure that no one in court is exposed to any display of bias or prejudice from any source. 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.<sup>5</sup>

Of course, as a general rule, a judge is entitled to discharge family responsibilities, to maintain friendships and to engage in social activities. However, 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 reduce respect for judicial office or might cast doubt upon their judicial impartiality; or which might expose them to charges of hypocrisy by reason of their private life.

While appointment to judicial office brings with it limitations on private and public conduct, there is a public interest in judges participating, insofar as their office permits, in the life and affairs of the community. As recognised above, these limitations may be different depending upon the nature of the jurisdiction. The public interest in magistrates being involved in their local community, for example, is well understood.

The principles of exercising equality and fairness of treatment have always been fundamental to the role and conduct of the judiciary when carrying out their judicial functions and are inherent in the judicial oath. These principles should also be reflected in conduct outside court. The Lord

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<sup>5</sup> For further guidance see the Judicial College's Equal Treatment Bench Book.  
<https://judicialcollege.judiciary.gov.uk/mod/book/view.php?id=27208>

Chief Justice and Senior President of Tribunals have issued a message stating their expectations and commitment in this area.<sup>6</sup>

In accordance with the relevant Terms of Appointment and Conditions of Service, the Lord Chief Justice or the Senior President of Tribunals (either personally or through the delegated authority given to the relevant leadership judges<sup>7</sup>) may on occasion issue instructions and guidance as they consider appropriate. Amongst other things, this might include guidance on the time within which judgments should be completed and instructions intended to ensure the effective operation of the courts and tribunals. Judges should adhere to these instructions and guidance.

In accordance with the Declaration and Undertaking signed on appointment, magistrates should comply with any directions in relation to their sitting as a magistrate.

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<sup>6</sup> <https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/diversity/message-from-lcj-judicial-diversity/>

<sup>7</sup> See footnote 2



## Part 3: Guidance on specific issues

This Part of the Guide contains guidance on a number of specific issues. It is not intended to be prescriptive (except where stated) nor is it exhaustive. It should be read in conjunction with the general principles set out in Part 2 above. It applies to all judges, unless stated otherwise.

### Activities outside court

#### Commercial activities

The restrictions on judges' involvement in commercial enterprises are set out in the relevant Terms and Conditions.

#### Salaried judges

As a general rule, salaried judges may not hold commercial directorships, other than ones concerned with the management of family assets, and may only hold non-commercial directorships where they relate to organisations whose primary purpose is not profit-related, and whose activities are of an uncontroversial character.

#### Fee-paid judges

Whilst fee-paid judges are not subject to the same degree of constraint as those who are salaried, they should not use their appointment as a means of pursuing personal, professional or commercial advantage.

#### Magistrates

Whilst magistrates are not subject to the same degree of constraint as salaried judges, they should not use their appointment as a means of pursuing personal, professional or commercial advantage. They should also be mindful of the need to ensure that any personal, professional or commercial activities do not create a conflict of interest (real or perceived) with their role as independent judicial office holders.<sup>8</sup>

Magistrates should seek advice from their justices' clerk (or equivalent) if in any doubt about the applicability of the above to their personal circumstances.

#### Community Organisations

Judicial involvement in educational, charitable, religious and other organisations may bring value to communities. Therefore judges should always be careful about the extent and nature of their involvement.

The following factors should be taken into account:

- The involvement must not compromise judicial independence or put at risk the status or integrity of judicial office.
- Careful consideration should be given to the propriety of becoming a public spokesperson for an organisation.
- The involvement should not be so onerous or time consuming as to interfere with the

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<sup>8</sup> The Lord Chancellor's Directions to Advisory Committees contain detailed guidance about the compatibility of various professions with serving as a magistrate. <https://www.judiciary.gov.uk/publications/advisory-committeesjustices-peace/>

judge's performance of his or her duties.

- In the case of the salaried judiciary, the judge's role should not involve active business management.
- The involvement should not be with the purpose of lending status or propriety/respectability to an organisation by virtue of judicial office.

### **Fund raising**

Judges should take care in considering whether, and if so to what extent, their name and title should be associated with a public appeal for funds, even for a charitable organisation. Such an appeal 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 there is no such risk.

### **Universities, schools etc**

Many judges hold or have held high office in governing bodies of universities, schools 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. Furthermore, 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 be declared.

### **Disciplinary panels**

Judges may sometimes be invited to sit on the disciplinary panels of sporting, charitable or other organisations or to play a role in religious courts or similar bodies. Judges should not accept such an invitation where the appointment might appear inconsistent with their role as a judge or cast doubt on their judicial independence or impartiality. They should also take care to ensure that the purpose of the invitation is not to lend the respectability of the office of a judge, or the reputation of the holder, to an organisation involved in matters of public concern or controversy. The approval of the relevant the relevant leadership judge<sup>9</sup> **should be sought in all cases.**

### **Fee-paid judges**

Whilst it is accepted that fee-paid judges may play a greater role in the community, they should give careful consideration to the advice set out above before engaging in any community activity.

### **Magistrates**

As magistrates may also play a greater role in the community the guidance to fee-paid judges applies equally to them.<sup>10</sup>

If in any doubt about the appropriateness of participating in community activities, magistrates should seek advice from their justices' clerk (or equivalent.)

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<sup>9</sup> See footnote 2

<sup>10</sup> The Lord Chancellor's Directions to Advisory Committees on Justices of the Peace contain guidance on magistrates' involvement in other voluntary activities. <https://www.judiciary.gov.uk/publications/advisory-committees-justicespeace/>

## Contact with the Legal Profession

There is a long-standing tradition of association between judiciary and the legal professions. As a matter of common sense, judges should avoid direct association with individual members of the profession who are engaged in current or pending cases before them. They should also bear in mind that too close a social relationship with a practitioner who is regularly involved in litigation before the officeholder's court may create a perception of bias.

### Data protection obligations

Guidance on how the General Data Protection Regulations (GDPR) and Data Protection Act 2018 apply to the judiciary has been issued with the agreement of the Lord Chief Justice, the Senior President of Tribunals and the Lord Chancellor and is available on the judicial intranet.<sup>11</sup>

### Gifts, Hospitality and Social Activities

It is axiomatic that all members of the judiciary must not exploit the status and prestige of judicial office to obtain personal favours or benefits.

Judges should be wary, therefore, of accepting any gift or hospitality which might appear to relate

in some way to their judicial office and which might be construed as an attempt to attract judicial goodwill or favour.

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 as set out in terms and conditions. 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.

Judges should, however, exercise caution 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.

Judges who are in any doubt as to the propriety of accepting any gift or hospitality should seek advice from their relevant leadership judge.<sup>12</sup>

## Judicial titles

### Salaried judges

Salaried judges may refer to their status in a non-judicial capacity but, in doing so, should exercise caution, paying close attention to the guiding principles set out in Part 2 above.

### Fee-paid judges

Fee-paid judges should only use their title whilst acting in a judicial capacity. It is permissible to refer to judicial office as part of a CV. However, fee-paid judges should not use their title as an advertisement for professional services or for the furtherance of trade, business or political interests. They should also avoid reference to their title in media interviews, unless it

<sup>11</sup> <https://intranet.judiciary.uk/publications/dpa-it-and-information-security-guidance-for-the-judiciary/>

<sup>12</sup> See footnote 2

is directly relevant to the content. They should have regard to the principles set out in the Media Guide for the Judiciary which is available on the judicial intranet.<sup>13</sup>

## Magistrates

The initials JP may be used on private and business letterheads etc in the same way as academic or professional qualifications. But they should not be used for the furtherance of trade, professional, business or political interests.<sup>14</sup>

## Political activities

### Salaried judges (Courts and Tribunals)

There is a statutory prohibition on salaried judges undertaking any kind of political activity or having ties with a political party.<sup>15</sup> This prohibition includes holding political office. It is also set out in salaried judges' Terms and Conditions.

Judges should avoid any appearance of political ties – e.g. by attending political gatherings, political fundraising events, contribution to political parties or speaking within political forums.

In addition, judges should not participate in public demonstrations which would associate them with a political viewpoint or cause, diminish their authority as a judicial officeholder or cast doubt on their independence and create 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 and should act accordingly. A judge's family should be regarded as including the following:

- **Spouses/civil partners** – this extends to any person with whom the officeholder has a continuing relationship, whether or not one in which the two parties live together as spouses or civil partners.
- **Close relatives** – i.e. the officeholder's father, mother, son, daughter, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law or step-child; or persons who have any of those relationships with a partner. This includes relatives by adoption.

Further, in the wider context, if a judge is known to hold strong views on topics relevant to a case, by reason of public statements or other expression of opinion, he or she should consider whether it would be appropriate to hear the case irrespective of whether the matter is raised by the parties. The risk will arise if a judge has taken part publicly in a controversial or political discussion.

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<sup>13</sup> <https://intranet.judiciary.gov.uk/wp-content/uploads/2011/12/media2014-august-2014.pdf>

<sup>14</sup> Further guidance is available in Useful Information for Magistrates and the Guidance on use of the suffix JP. <https://intranet.judiciary.gov.uk/wp-content/uploads/2020/09/MAGISTRATE-INFO-FINAL.v2-Amended-with-LCJ-and-LC-sigs.pdf>

<sup>15</sup> See Schedule 1 to the House of Commons Disqualification Act of 1975 and to the Northern Ireland Assembly Disqualification Act of 1975. See also s137 of the Constitutional Reform Act 2005. The Terms of Appointment and Conditions of Service for all salaried judges state that: "A judge must expect to forgo any kind of political activity ... A judge is also expected to submit his/her resignation to the Lord Chancellor in the event of nomination or adoption as a prospective candidate for election to Parliament, or to the Scottish Parliament, the Welsh Assembly, the Northern Ireland Assembly or the European Parliament."

### Fee paid judges (legal)

Whilst there is no general<sup>16</sup> prohibition on political activity in statute or Terms and Conditions, fee-paid office holders are expected to refrain from any political activity which would conflict with their judicial office or be seen to compromise their impartiality having regard, for example, to the approach of the Court of Appeal in the case of *Locabail (UK) Ltd. v Bayfield Properties Ltd.* (2002) QB 451.

### Fee paid Non-Legal Members and Magistrates

Although there is no prohibition on political activity, non-legal members and magistrates who are involved in political activity should guard against any perception that their involvement is in their judicial capacity.

The Lord Chancellor's Directions to Advisory Committees<sup>17</sup> set out the restrictions on where magistrates elected to certain political offices may sit.

### Coroners

Coroners are also expected to refrain from political activity which would conflict with their judicial office. They are required to vacate office immediately if they become a councillor for a local authority within the relevant coroner area: Coroner and Justice Act 2009 Schedule 3 paragraph 11.

### Retired Judges

There is no prohibition on retired judges, providing they are no longer sitting, engaging in political activity and wider public debate. However, they should take care to avoid any activity which may tarnish the reputation of the judiciary and the perception of its independence.

### Public Debate and the Media

This section should be read in conjunction with: the Guide to Judges on Appearances before Select Committees, the Guidance to the judiciary on engagement with the Executive, the Media Guide for the judiciary (all of which are available on the judicial intranet) and the preceding paragraphs.<sup>18</sup> All judges should be aware that, by long standing convention, they should not comment publicly on:

- the merits, meaning, or likely effect of government policy or proposals, including proposed legislation;

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<sup>16</sup> Certain fee-paid office holders are, however, prohibited, either by statute or their Terms and Conditions, from membership of Parliament, or to the Scottish Parliament, the Welsh Assembly, the Northern Ireland Assembly or the European Parliament

<sup>17</sup> Magistrates who are elected Members of the UK Parliament, the European Parliament or Welsh Assembly should sit in a different local justice area to the constituency concerned. Those who are formally or informally adopted as prospective candidates must not sit in the same local justice area as the constituency concerned until the result of the election is known. If elected they must seek transfer to a different local justice area or, if not possible, resign (and may request that their name be entered in the Supplemental List).

<sup>18</sup> Select Committees [https://intranet.judiciary.uk/wp-content/uploads/2014/10/select\\_committee\\_guidance.pdf](https://intranet.judiciary.uk/wp-content/uploads/2014/10/select_committee_guidance.pdf) Engagement with the Executive <https://intranet.judiciary.gov.uk/wp-content/uploads/2016/07/guidance-to-the-judiciary-on-engagement-with-the-executive.pdf>

Media Guide <https://intranet.judiciary.gov.uk/wp-content/uploads/2011/12/media2014-august-2014.pdf>

- the merits of public appointments; or,
- the merits of individual cases. The conventions operate variously to promote the dignity of the judicial office, the finality of judgments, and, crucially, the independence of the judiciary from the other branches of government.

They are described more fully in the Select Committees guide, but are applicable across all contexts. The guide also describes the very limited circumstances in which exceptions might apply.

All judges should exercise their freedom to talk to the media with caution. Judges 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.

Guidance as to how to react when a member of the judiciary is factually misrepresented or where the officeholder is aware, particularly when sentencing in a criminal case, that remarks could be misinterpreted by reporters is contained in the Media Guide.<sup>19</sup>

As the Select Committee guide makes clear, many aspects of the administration of justice and the functioning of the courts are the subject of necessary and legitimate public consideration, and appropriate judicial contribution to this debate can be desirable. It may contribute to public understanding and to public confidence in the judiciary. There is unlikely to be an objection to comment which deals directly with the operation of the courts, the independence of the judiciary or aspects of the administration of justice while, as a matter of desirable practice, judges are encouraged to refrain from commenting on any issue when the judiciary intend to issue a formal, institutional comment, but have not yet done so.

Judges should be aware; however, that participation in public debate on any topic may entail the risk of undermining public perception in the impartiality of the judiciary whether or not a judge's comments would lead to recusal from a particular case. This risk arises in part because the judge will not have control over the terms of the debate or the interpretation given to his or her comments.

The risk of expressing views that will give rise to issues of bias or pre-judgment in future cases before the judge is a particular factor to be considered. This risk will seldom arise from what a judge has said in other cases, but will arise if a judge has taken part publicly in a political or controversial discussion.

For these reasons, judges must always be circumspect before accepting any invitation, or taking any step, to engage in public debate. Consultation with their relevant leadership judge<sup>20</sup> before doing so will almost always be desirable.

Where a judge decides to participate in public debate, he or she should be careful to ensure that the occasion does not create a public perception of partiality towards a particular organisation (including a set of chambers or firm of solicitors), group or cause or to a lack of even handedness. Care should also be taken therefore, about the place at which and the occasion on which a judge speaks. Participation in public protests and demonstrations may well involve substantial risks of this kind and, further, be inconsistent with the dignity of judicial office.

The risk of different judges expressing conflicting views in debate must also be borne in mind: a public conflict between members of the judiciary, expressed out of court, may bring the judiciary into disrepute and diminish the authority of the court.

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<sup>19</sup> <https://intranet.judiciary.gov.uk/wp-content/uploads/2011/12/media2014-august-2014.pdf>

<sup>20</sup> See footnote 2

There is, in principle, however, no objection to members of the judiciary speaking on legal matters, which are unlikely to be controversial, at lectures, conferences or seminars organised by professional bodies, or by academic or other similar non-profit making organisations. Lectures and seminars which deal with matters of more general public interest may, however, raise wider issues of policy, sometimes not immediately apparent. Depending on the circumstances, it may be inappropriate for a judicial office holder to deliver a public lecture or participate in a conference or seminar run by a commercial organisation.

If writing an article or letter for publication, careful consideration should be given to whether it is appropriate to include reference to the writer's judicial position. In addition, care should be taken not to comment on a particular case or judicial decision or upon a politically sensitive issue. Reference should be made to the Media Guide.

### **Salaried judges**

Salaried judges should not accept requests or seek to give interviews on any topic without first seeking advice from the relevant leadership judge.<sup>21</sup> They should also refer to the Media Guide as a matter of course.

### **Fee-paid judges**

Fee-paid judges can, where appropriate, participate in the media and engage in public debate. However, they must ensure that they do not publicly make statements that undermine their reputation of impartiality and neutrality.

Fee-paid judges must take great care to ensure that they do not reveal the fact that they sit in a judicial capacity, or that they are described as a judge, when speaking in public, save when they are speaking on strictly legal matters in politically uncontroversial forums. This is in order to prevent their personal views being construed as the views of the judiciary.

### **Magistrates and Non-Legal Members**

Magistrates and non legal members may sometimes be asked to speak publicly about matters relating to other roles which they hold within their profession or local community. When this happens, they should ensure that they are not described by their judicial role and they should be careful not to give the impression that they are commenting in that capacity. They must also be mindful of the risk of accusations of bias.

Further guidance is set out in the *Useful Information for Magistrates* leaflet<sup>22</sup> which is available on the [judicial intranet](#).

### **References**

There is no objection in principle to a judge giving references for character or professional competence for people whom he or she knows well. Consideration should be given as to whether the officeholder 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. Judges should guard against inappropriate requests.

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

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<sup>21</sup>See footnote 2

<sup>22</sup> <https://intranet.judiciary.uk/wp-content/uploads/2020/09/MAGISTRATE-INFO-FINAL.v2-Amended-with-LCJ-and-LC-sigs.pdf>

should be undertaken only exceptionally because of the risks inherent in the judicial officeholder entering the arena, albeit for a limited purpose, and the pressure such evidence may put on the trial judge or magistrate. In all cases, the head of the appropriate jurisdiction should be consulted before taking a decision to give evidence.

### **Magistrates**

Magistrates who are asked to complete references or countersign documents – for example, in connection with an individual’s application for a UK passport – should be aware that away from their court and judicial duties the JP suffix carries no legal authority. If they decide to use the JP suffix after their names when signing such documents they would be doing so in their capacities as private citizens. Use of the JP suffix in these instances carries no additional weight, either in law or in any other way. It is also important to be mindful at all times of the perception use of the JP suffix could create when signing a personal reference or other documents that have no connection with a magistrate’s duties. Magistrates on the Supplemental List are not qualified to countersign applications for shotgun certificates.

### **Remuneration**

This section applies principally to salaried judges.

#### **Salaried judges**

The restrictions on salaried judges receiving remuneration in addition to their judicial salary are set out in Terms and Conditions. In short:

- Judges holding full-time appointments are barred from legal practice by virtue of section 75 and Schedule 11 of the Courts and Legal Services Act 1990. This prohibition is extended to salaried part time judges by means of terms and conditions.
- Salaried judges may not undertake any other remunerated employment, nor receive or retain any fee or emolument in any circumstances save for royalties earned as an author or editor.

All members of the judiciary may of course receive money from investments or property.

### **Reporting personal involvement in court proceedings and criminal charges**

All judicial office holders have an obligation<sup>23</sup> to notify the appropriate senior judicial officer<sup>24</sup> if they are aware of any matters relating to conduct which may affect their position or may reflect on the standing and reputation of the judiciary at large.

#### **Criminal proceedings (including minor offences)**

Without prejudice to the generality of the above, they must also notify the Lord Chief Justice or the Senior President if they are cautioned for, or charged with, any criminal offence other than a parking or minor traffic offence without aggravating circumstances.

In respect of minor offences, judicial office holders should follow the guidance issued by the Lord Chief Justice in December 2007. These have been issued following agreement with the Lord Chancellor.<sup>25</sup>

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<sup>23</sup>See the relevant Terms and Appointment and Conditions of Service for salaried and fee-paid Courts and Tribunals office holders and the Declaration and Undertaking for magistrates.

<sup>24</sup> The Lord Chief Justice, Senior President of Tribunals or Bench Chair and Justices’ Clerk as appropriate.

<sup>25</sup> <https://intranet.judiciary.uk/publications/guide-to-judicial-conduct-reporting-minor-offences/>



Judges should note that the exemptions set out in the Lord Chief Justice's 2007 guidance do not apply where there are court proceedings relating to the charge. This is to ensure that full and timely consideration can be given to the listing of the case and whether or not it would be appropriate for the officeholder to continue sitting while court proceedings are pending.

### **Civil proceedings**

All judicial office holders have an obligation to report to the senior judicial officer their involvement in legal proceedings which are coming to court. This includes all civil proceedings (including family proceedings) and is to ensure that the senior judicial officer can give full and timely consideration to the listing of the case and whether or not it would be appropriate for the officeholder to continue sitting in that area or jurisdiction whilst proceedings are ongoing.

### **Other proceedings**

Judicial office holders must also notify the appropriate senior judicial officer if they are the subject of any complaint or disciplinary proceedings by any professional body to which they belong; or if they get into serious financial difficulties particularly where legal proceedings are or are likely to be initiated.

Failure to report proceedings as set out above could result in disciplinary action.

### **Social Activities**

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

### **Social networking, blogging and Twitter**

Whilst the use of social networking is a matter of personal choice, judges' attention is drawn to the following guidance that the Judicial Technology Committee has issued on the security aspects of this medium.<sup>26</sup>

Although there is no specific guidance on this matter, members of the judiciary are encouraged to bear in mind that the spread of information and use of technology means it is increasingly easy to undertake 'jigsaw' research which allows individuals to piece together information from various independent sources. Judges should try to ensure that information about their personal life and home address are not available online. A simple way for judges to check is to type their name into an internet search engine such as Google. Care should also be taken both by the judge and their close family members and friends to avoid the judge's personal details from entering the public domain through social networking systems such as Facebook or Twitter.

Judges should also be wary of:

- 1 Publishing more personal information than is necessary (particular with a view to the risk of fraud.)
- 2 Posting information which could result in a risk to personal safety. For example, details of holiday plans and information about family.
- 3 Automatic privacy settings. Often it is possible to raise privacy settings within social media forums.

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<sup>26</sup> <https://intranet.judiciary.uk/publications/dpa-it-and-information-security-guidance-for-the-judiciary/>

- 4 Lack of control over data once posted.
- 5 Posting photographs of themselves in casual settings whether alone or with family members and/ or friends.

Attention is also drawn to the guidance on blogging by judicial office-holders issued on behalf of the Senior Presiding Judge and the Senior President of Tribunals on 8 August 2012. The guidance is also available on the judicial intranet.<sup>27</sup>

In short, the guidance states that whilst blogging by members of the judiciary is not prohibited, judicial office-holders who blog (or who post comments on other people's blogs) must not identify themselves as members of the judiciary. They must also avoid expressing opinions which, were it to become known that they hold judicial office, could damage public confidence in their own

impartiality or in the judiciary in general. This guidance also applies to blogs which purport to be anonymous. Failure to adhere to the guidance could ultimately result in disciplinary action.

### **Use of Equipment**

Judges should not use equipment, including IT equipment, provided by HMCTS for their official use, for other purposes which could bring them or the judiciary in general into disrepute. Detailed guidance upon the use of IT equipment, including the importance of not compromising its security is available on the judicial Intranet.<sup>28</sup>

### **Personal relationships and perceived bias**

This is a subject in relation to which the situations which may arise are so varied that great reliance must be placed on the judgment of the judicial officeholder, 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* [2002] QB 451 provides authoritative guidance (see particularly paragraph 25). Relevant relationships may exist with parties to litigation, legal advisers or representatives of parties, and witnesses.

Guidelines which are likely to be applicable despite the absence of hard and fast rules are:

- 1 A judicial officeholder should not sit on a case in which he or she has a close family relationship with a party or the spouse or domestic partner of a party.
- 2 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.
- 3 A current or recent business association with a party will usually mean that an officeholder 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. Members of the judiciary should also disqualify themselves from a case in which their solicitor, accountant, doctor, dentist or other professional adviser is a party in the case.

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<sup>27</sup> <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Guidance/blogging-guidance-august-2012.pdf>

<sup>28</sup> <https://intranet.judiciary.uk/publications/dpa-it-and-information-security-guidance-for-the-judiciary/>

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.

5 The fact that a relative of the judicial officeholder is a partner in, or employee of, a firm of solicitors engaged in a case before the individual officeholder 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.

6 Past professional association with a party as a client need not of itself be a reason for disqualification but the officeholder must assess whether the particular circumstances could create an appearance of bias.

7 Where a witness (including an expert witness) is personally well known to the officeholder 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.

8 A judicial officeholder should not sit on a case in which a member of his or her family (as defined in paragraph 3 above) appears as advocate.

### **Dealing with Conflicts of Interest**

Whilst the Judicial Conduct Investigations Office (JCIO) would not consider a complaint about recusal as it relates to a judicial decision, the JCIO could become involved if an appeal court's criticism of a judge for failure to declare a potential conflict of interest was so serious as to raise a question of judicial misconduct.

Judges should 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 an officeholder 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 officeholder against a party, including findings on credibility, will rarely provide a ground for disqualification. The possibility that the officeholder'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.

If there are circumstances which may give rise to a suggestion of bias, or appearance of bias, if possible, they should be disclosed to the parties well before the hearing. Disclosure, followed by recusal on the day of the hearing, will almost certainly involve additional costs for the parties and will frequently cause listing difficulties. However, listing arrangements in many courts may render notification in advance impossible.

Disclosure should of course be to all parties and, save when the issue has been resolved by correspondence before the hearing, discussion between the officeholder 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 officeholder 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 officeholder sitting, if he or she, on balance, considers that recusal is the proper course, the officeholder should so act. Conversely, there are likely to be cases in which the officeholder 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.

## Magistrates

The same principles apply. Further information is available in the *Useful Information for Magistrates* leaflet, available on the judicial intranet.<sup>29</sup> If in any doubt, the magistrate should consult his or her justices' clerk or equivalent for advice.

## Behavior towards court staff and court users

Members of the judiciary should seek to be courteous, patient, tolerant and punctual and should respect the dignity of all. They should ensure that no one in court is exposed to any display of bias or prejudice on grounds which include but are 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”. 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 Judicial College’s Equal Treatment Bench Book.<sup>30</sup> The duty remains on the judicial officeholder to apply the law as it relates to allegedly discriminatory conduct.

Care should be taken to ensure proper access to justice and equality of treatment where one or both of the parties before the court are unrepresented.<sup>31</sup>

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<sup>29</sup> <https://intranet.judiciary.uk/wp-content/uploads/2020/09/MAGISTRATE-INFO-FINAL.v2-Amended-with-LCJ-and-LC-sigs.pdf>

<sup>30</sup> <https://judicialcollege.judiciary.gov.uk/mod/book/view.php?id=27208>

<sup>31</sup> See in particular, the requirements set out in CPR 3.1A.