

# Judicial Committee of the Privy Council



## Guide to Judicial Conduct (2019)

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## **FOREWORD BY THE RT HON LADY HALE**

Every court should have a Code of Judicial Conduct that sets out the standards of ethical conduct to be expected of the court. Such a Code serves a number of purposes. It provides guidance to the members of the court. It informs those who use the court of the standards that they can reasonably expect of its judges. It explains to members of the public how judges behave and should help to secure their respect and support for the judiciary. In 2009, when the Supreme Court of the United Kingdom was established, the Justices adopted a Guide to Judicial Conduct, which has been revised this year. At the same time, it was decided that the Judicial Committee of the Privy Council should also adopt such a Guide, for the information of members of the Board, users, and the general public throughout the jurisdictions covered by the Judicial Committee.

July 2019

## CODE OF CONDUCT: JUDICIARY

### 1 INTRODUCTION

- 1.1 The Judicial Committee of the Privy Council (collectively referred to hereafter as 'the Board') has decided to adopt this Guide to its members', judicial conduct. Such guides have become commonplace in recent years. There are now equivalent guides for the judiciary in many jurisdictions/countries from which appeals may be brought to the Judicial Committee:
- 1.2 The Board has drawn upon the *Bangalore Principles of Judicial Conduct*, endorsed by the United Nations Human Rights Commission in 2003 and published with a commentary in 2007. The intention of the *Principles* is to establish standards of ethical conduct for judges, to provide guidance for individual judges and the judiciary in regulating judicial conduct, and also to assist members of the executive and legislature, lawyers and the public, better to understand and support the judiciary. The principles are stated as six "values":
- (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.
- 1.3 The specific guidance given below, much of which might be thought to go without saying, follows the same pattern. There is considerable overlap between the principles.

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<sup>1</sup> See for example the Code of Conduct for Eastern Caribbean Supreme Court Judges at <https://www.eccourts.org/code-of-judicial-conduct-2/>; and <http://www.ttlawcourts.org/jeibooks/books/GuidelinesforJudicialConduct.pdf> for Trinidad and Tobago.

- 1.4 The primary responsibility for deciding whether a particular activity or course of conduct is appropriate rests with the individual Judge. The interests of justice must always be the overriding factor. There is also a range of reasonably held opinions on some points. In cases of doubt, a Judge should seek the advice of a senior member of the Board.

## **2 INDEPENDENCE**

- 2.1 The judiciary of the United Kingdom including the Judicial Committee from its inception has been independent of the government since at least the early 18th century. Judicial independence is a cornerstone of any system of government in a democratic society and a safeguard of the freedom and rights of the citizen under the rule of law. The members of the Board will 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 members of the Board have all sworn the judicial oath, to “do right to all manner of people” according to law “without fear or favour, affection or ill-will.” In taking that oath, each Judge has acknowledged that he or she is primarily accountable to the law which he or she must administer. This involves putting aside private interests and preferences and being alert to attempts to influence decisions or curry favour.
- 2.3 The members of the Board may consult with their colleagues when points of difficulty arise on matters of conduct. But they are solely responsible for the decisions that they take in the performance of their judicial duties.
- 2.4 The members of the Board must be immune to the effects of publicity, whether favourable or unfavourable. But that does not mean ignoring the profound effect which their decisions are likely to have, not only on the parties before the Court, but also upon the wider public whose concerns may well be forcibly expressed in the media.
- 2.5 The members of the Board accept their responsibility to promote public understanding of their work and of their decisions. But they will show appropriate caution and restraint when explaining or commenting publicly upon their decisions in individual cases.
- 2.6 If a Judge is misquoted or misrepresented in the media, the matter will be handled by the Board’s communications officer in consultation with the Judge.

## **3 IMPARTIALITY**

- 3.1 Each Judge will 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 individual Judge and of the Board.

- 3.2 Each Judge will seek to avoid extra-judicial activities that are likely to cause him or her 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 Each Judge will refrain from any kind of party political activity and from attendance at political gatherings or political fundraising events, or contributing to a political party, in such a way as to give the appearance of belonging to a particular political party. They will also refrain from taking part in public demonstrations which might diminish their authority as a judge or create a perception of bias in subsequent cases. They will bear in mind that political activity by a close member of a Judge's family might raise concern in a particular case about the Judge's own impartiality and detachment from the political process.
- 3.4 However, the members of the Board recognise that it is important for members of the Board to deliver lectures and speeches, to take part in conferences and seminars, to write and to teach and generally to contribute to debate on matters of public interest in the law, the administration of justice, and the judiciary. Their aim is to enhance professional and public understanding of the issues and of the role of the Board.
- 3.5 In making such contributions, the members of the Board will take care to avoid associating themselves with a particular organisation, group or cause in such a way as to give rise to a perception of partiality towards that organisation (including a set of chambers or firms of solicitors), group or cause in the conduct of their judicial duties.
- 3.6 In their personal relations with individual members of the legal profession, especially those who practise regularly before the Board, the members of the Board will avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

### **Bias and the appearance of bias**

- 3.7 The question whether an appearance of bias or possible conflict of interest is sufficient to disqualify a Judge from taking part in a particular case is the subject of United Kingdom and Strasbourg jurisprudence which, together with the jurisprudence of any jurisdiction from which appeals come to the Board, will guide the members of the Board in specific situations. Leading cases include *Porter v Magill* [2002] 2 AC 357, *Locobail (UK) Ltd v Bayfield Properties Ltd* [2002] QB 451, *Re Medicaments and Related Classes of Goods (No.2)* [2001] 1 WLR 700, *Helow v Secretary of State for the Home Department* [2008] 1 WLR 2416 and *Stubbs v The Queen* [2018] UKPC 30.
- 3.8 Circumstances will vary infinitely and guidelines can do no more than seek to assist the individual 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. What follows are merely signposts to some of the questions which may arise.

3.9 A Judge will not sit in a case where:

- (i) he or she has a close family relationship with a party or with the spouse or domestic partner of a party;
- (ii) his or her spouse or domestic partner was a judge in a court below;
- (iii) he or she has a close family relationship with an advocate appearing before the Board.

3.10 Sufficient reasons for not sitting on a case include:

- (i) personal friendship with, or personal animosity towards, a party; friendship is to be distinguished from acquaintance, which may or may not be a sufficient reason depending upon its nature and extent;
- (ii) current or recent business association with a party; this includes the Judge's own solicitor, accountant, doctor, dentist or other professional adviser; it does not normally include the Judge's insurance company, bank or a local authority to which he or she pays council tax.

3.11 Reasons which are unlikely to be sufficient for a Judge not to sit on a case, but will depend upon the circumstances, include:

- (i) friendship or past professional association with counsel or solicitors acting for a party;
- (ii) the fact that a relative of the Judge is a partner in, or employee of, a firm of solicitors or other professional advisers involved in a case; much will depend upon the extent to which that relative is involved in or affected by the result in the case;
- (iii) past professional association with a party as a client; much will depend upon how prolonged, close, or recent that association was.

3.12 A Judge will not sit in a case in which he or she or, to his or her knowledge, a member of his or her family has any significant financial interest in the outcome of the case. 'Family' for this purpose means spouse, domestic partner or other person in a close personal relationship with the Judge; son, son-in-law, daughter, daughter-in-law; and anyone else who is a companion or employee living in the Judge's household. It is for the Judge to inform himself or herself about his or her personal financial and fiduciary interests and to take reasonable steps to be informed about the interests of members of his or her family.

3.13 A significant financial interest could arise, not from an interest in the outcome of the particular case, but where the decision on the point of law might have an impact upon the Judge's own financial interests. The Judge will have regard 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.

- 3.14 Previous participation in public office or public debate on matters relevant to an issue in a case will not normally be a cause for a Judge not to sit, unless the Judge has thereby committed himself or herself to a particular view irrespective of the arguments presented. This risk will seldom, if ever, arise from what a Judge has said or decided in other cases, or from previous findings against a party in other litigation.
- 3.15 If circumstances which may give rise to a suggestion of bias, or the appearance of bias, are present, they should be disclosed to the parties well before the hearing, if possible. Otherwise the parties may be placed in a difficult position when deciding whether or not to proceed. Sometimes, however, advance notification may not be possible.
- 3.16 Disclosure should be to all parties and, unless the issue has been resolved before the hearing, discussion should be in open court. Even where the parties consent to the Judge sitting, the Judge should recuse himself or herself if, on balance, he or she considers that this is the proper course. 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.

#### **4 INTEGRITY**

- 4.1 As a general proposition, the members of the Board are entitled to exercise the rights and freedoms available to all citizens. There is a public interest in their participating, insofar as their office permits, in the life and affairs of the community. The members of the Board also have private and family lives which are entitled to the same respect as those of other people.
- 4.2 However, the members of the Board accept that the nature of their office exposes them to considerable scrutiny and puts constraints on their behaviour which other people may not experience. They are conscious that it is a privilege to serve the community in this capacity. They will try to avoid situations which might reasonably lower respect for their judicial office, or cast doubt upon their impartiality as judges, or expose them to charges of hypocrisy. They will try to conduct themselves in a way which is consistent with the dignity of their office.
- 4.3 In court, the members of the Board will seek to be courteous, patient, tolerant and punctual and to respect the dignity of all.
- 4.4 No Judge, or member of a Judge's family, will ask for or 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 his or her judicial duties.

#### **5 PROPRIETY**

- 5.1 The members of the Board will avoid impropriety and the appearance of impropriety in all of their activities. They will not exploit the prestige of their office to obtain personal favours or benefits.

- 5.2 A Judge may not practise law while in full time office: see Courts and Legal Services Act 1990, s 75 and Schedule 11.
- 5.3 The members of the Board will not use or lend the prestige of their office to advance their own private interests, or those of a member of their family or of anyone else, nor will they convey or permit others to convey the impression that anyone is in a special position improperly to influence the Judge in the performance of his or her judicial duties.
- 5.4 Confidential information acquired by a Judge in his or her judicial capacity will not be used or disclosed by the Judge for any purpose not related to his or her judicial duties.

### **Outside activities**

- 5.5 Members of the Board may form or join associations of judges or participate in other organisations representing the interests of judges.
- 5.6 Members of the Board may appear at a public hearing before a Parliamentary committee or official body concerned with matters relating to the law, the legal system, the administration of justice or related matters.
- 5.7 Members of the Board may 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.
- 5.8 Members of the Board may engage in other academic, voluntary, charitable or religious activities which do not detract from the dignity of their office or otherwise interfere with the performance of their judicial duties.
- 5.9 Subject to those constraints, members of the Board may properly be involved in the management of educational, voluntary, charitable or religious organisations. Care should be taken in allowing their name to be associated with an appeal for funds, even for a charitable organisation, lest it be seen as inappropriate use of judicial prestige in support of the organisation or creating a sense of obligation in donors.
- 5.10 Members of the Board who hold high office in universities and similar institutions bear in mind the desirability of avoiding involvement in controversial situations. Moreover, in considering whether to accept office and what role to play, members of the Board should bear in mind 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.

### **Commercial activities**

- 5.11 The requirements of a Judge's office and terms of service place severe restraints upon the permissible scope of his or her involvement with any commercial enterprise. Some guidance is given in the decided cases referred to earlier.

- 5.12 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.
- 5.13 A full-time Judge will not receive any remuneration other than a judicial salary except for fees and royalties earned as an author or editor but may of course receive money from investments or property.

### **Gifts and hospitality**

- 5.14 Caution should be exercised when considering whether to accept any gift or hospitality. Members of the Board will be wary 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.
- 5.15 Although members of the Board cannot be remunerated for giving talks or lectures or participating in events, 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 takes part in some public or private function should feel free to accept a small token of appreciation; this may include a contribution to charity.
- 5.16 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 acting in a public or professional capacity, carrying no degree of obligation, is entirely acceptable.
- 5.17 There is a long-standing tradition of association between the bench and the bar, the solicitors' profession and other professions providing legal services. This occurs both on formal occasions, such as dinners, and less formal ones. However, members of the Board will be cautious 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. They will also take care not to associate with individual members of the profession who are engaged in current or pending cases in such a way as to give any appearance of partiality.

### **References and social activities**

- 5.18 Members of the Board may give references for professional competence or character for people who are well known to them. A person should not be deprived of a reference because the person best able to give it is a Judge. 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 this should be undertaken only exceptionally. Consultation with a senior member of the Board is advisable before taking a decision to give evidence.

- 5.19 Members of the Board will assess social and other activities in the light of their duty to maintain the dignity of their office and not to permit associations which may affect adversely their ability to discharge their duties.

### **Online presence and social media**

- 5.20 Members of the Board are aware that their extra-judicial activities include their online presence; they will bear in mind that online discussions are not private, that comments may be copied and have an unintended readership and longevity; and that it is increasingly easy to piece together information on a Judge from a variety of sources. They will be wary of publishing online any more personal information than is necessary and will exercise extreme caution in discussing both judicial and personal matters. This includes their participation in social media.

## **6 EQUALITY**

- 6.1 A Judge should be aware of, and understand, diversity in society and differences arising from matters such as gender, race, ethnicity, colour, national origin, religion, caste, disability, birth or marital status, sexual orientation, socio-economic or educational or occupational background, and the like. A Judge will not, by words or conduct, show any bias against or preference towards any person or group on any such ground.
- 6.2 In court, the members of the Board will strive to ensure that no one in the court is exposed to any display of bias or prejudice on any such ground and that all are treated with equal respect by the members of the Board, their staff and everyone appearing in or attending the court. The court will strive to make reasonable adjustments for people with disabilities and for those who wish to manifest their religion, so far as it is practicable to do so.

## **7 COMPETENCE AND DILIGENCE**

- 7.1 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.

- 7.2 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 judgment writing and participation in judicial education. These topics are better dealt with, insofar as they are not prescribed in the rules of the Judicial Committee, in Practice Directions or in case law, by guidance from a senior member of the Board.