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Guide to Judicial Conduct

JUDICIARY OF THE FALKLAND ISLANDS AND SOUTH GEORGIA & THE SOUTH SANDWICH ISLANDS

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Contents

Part 1

Introduction

An independent judiciary, upholding the rule of law and safeguarding the rights and freedoms of the individual, is fundamental to any civilised society.

The Judiciary of the Falkland Islands, South Georgia and the South Sandwich Islands are committed to the maintenance of the highest standards of judicial conduct and fully recognise that maintaining such standards is essential if the community is to have confidence in its judiciary. This Guide is intended to aid judicial office holders 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 judicial officer holder.

This Guide, therefore, is not a code, nor does it contain rules other than where stated. Instead, it contains a set of core principles which will help judicial office holders reach their own decisions. The reality of life in the Falkland Islands which, as a small society, is at times isolated in communications and travel, means that a course of action that might be readily available to members of the judiciary in other larger jurisdictions cannot be strictly applied here. It is recognised that sometimes decisions may not be easy, and that different views might reasonably be taken as to an appropriate course of action in any given circumstance. In cases of difficulty or uncertainty, however, judicial office holders should seek advice from their judicial colleagues, the Senior Magistrate and/or the Chief Justice as appropriate.

This guide applies to all those who exercise judicial authority in the Courts of the Falkland Islands and of South Georgia and the South Sandwich Islands, including both the professional judiciary, the lay Justices of the Peace, and members of judicial or quasi-judicial tribunals.

Retired judicial office holders may still be regarded by the general public as representatives of the judiciary. They should exercise caution and are encouraged to refer to this guidance so as to avoid any activity that may tarnish the reputation of the judiciary.

Justices of the Peace on the supplemental list remain subject to their oaths.

Part 2: Guiding Principles

In carrying out their day-to-day functions the judiciary are entrusted with the exercise of considerable power and responsibility. Their decisions and actions can have significant effects on the lives of those who come before them.

There are three principles guiding judicial conduct:

- Judicial independence
- Impartiality
- Integrity

These principles provide judicial office holders 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[1].

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.

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

Judicial office holders 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 the people before 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 according to the Constitution and other laws in force in the [Falkland Islands], without fear or favour, affection or ill will…"*[2]. In taking that oath, judicial office holders acknowledge that they are primarily accountable to the law which they must administer. Some judicial office holders do not take the judicial oath, but they too are primarily accountable to the law which they administer.

Judicial office holders 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, court staff and colleagues in their personal impartiality and that of the judiciary.

It follows that judicial office holders 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 is not whether the judicial office holder would in fact be biased (which would, of course, require recusal). Judicial office holders must recuse themselves from any case where a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that they would be biased. This hypothetical observer is taken to know that judges take an oath to administer justice without fear or favour, but also to know that the taking of the oath, by itself, is not sufficient guarantee to exclude all legitimate doubt.

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

[1] See Annex A.

[2] See Annex B.

Integrity

Judicial office holders are expected to put the obligations of their office above their own personal interests.

In practical terms, this means that judicial office holders 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; and
- Discretion in personal relationships, social contacts and activities.

Judicial office holders' conduct when at court should uphold the status of judicial office, the commitment made in the judicial oath and the confidence of litigants and the public. They 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 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. It is important to stress that the obligation to behave appropriately relates to conduct when acting in a judicial capacity and so does not end upon exiting a hearing.

Because judicial office necessarily attracts public scrutiny, judicial office holders are subject to constraints on their private lives which might not apply to others. Whilst they are, of course, entitled to a private life, they should not act in a way, even in their private or family life, which could reduce respect for judicial office or case doubt on their independence impartiality or integrity. They should avoid situations in which risks of this kind are likely to arise.

While appointment to judicial office brings with it these limitations on private and public conduct, there is a public interest in judicial office holders 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.

Part 3: Guidance on Specific Issues

This Part of the Guide contains guidance on a few specific issues. It is not intended to be prescriptive nor is it exhaustive. It should be read in conjunction with the general principles set out in Part 2 above. It applies to all judicial office holders, unless stated otherwise.

Community Organisations

Judicial involvement in educational, charitable, religious and other organisations may bring value to communities. Judicial office holders should, however, 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 with the purpose of lending status or propriety/respectability to an organisation by virtue of judicial office.

Fundraising

Judicial office holders 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.

Political Activities

Any judicial office holder who is known to hold strong views on topics relevant to a case, by reason of public statements or other expression of opinion, 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 judicial office holder has taken part publicly in a controversial or political discussion.

As well as direct membership of political organisations, judicial office holders should generally avoid political controversy unless the subject of the controversy itself directly affects the operation of the courts, the independence of the judiciary or the administration of the justice. This also means not participating in public demonstrations which, by associating judicial office holders with a political viewpoint or cause, may diminish his or her judicial authority and create, in subsequent cases, a perception of bias.

Contact with the Legal Profession

There is a long-standing tradition of association between judiciary and the legal profession. As a matter of common sense, judicial office holders should avoid direct association with individual members of the profession who are engaged in current or pending cases before them, unless the other parties are also present or aware of the contact.

Judicial officer holders should not practice as a legal practitioner in the Falkland Islands, neither should they (with the exception of close family) offer, or seek to offer, any advice or counsel to any person in relation to any legal proceedings which are, or are likely to come, within the jurisdiction of the Falkland Islands courts. If they do offer advice to close family they should recuse themselves from any court proceedings relating to the matter.

Public Debate and the Media

All judicial office holders 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 unless invited to do so;
- 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 judgements and, crucially, the independence of the judiciary from the other branches of government.

In general, for good reason, judicial office holders do not talk to the media. Judicial office holders cannot talk about the cases they or colleagues hear, and it is important to maintain the separation of powers and independence and not comment on matters of controversy. If judicial office holders receive a request for media or social media engagement (including podcasts), they are expected to seek immediate advice from the Senior Magistrate, Chief Justice or Head of Courts.

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

For these reasons, judicial office holders must always be circumspect before accepting any invitation, or taking any step, to engage in public debate.

Any judicial office holder who decides to participate in public debate 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 judicial office holder 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 judicial office holders 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.

There is, in principle, however, no objection to judicial office holders 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.

Justices of the Peace 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.

References

There is no objection in principle to judicial office holders giving references for character or professional competence for people whom they know well. Consideration should be given as to whether the judicial office holder 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 a judicial office holder. Judicial office holders 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 should be undertaken only exceptionally because of the risks inherent in the judicial office holder entering the arena, albeit for a limited purpose, and the pressure such evidence may put on the trial judge or Justice of the Peace. In all cases, the Chief Justice, Senior Magistrate or Head of Courts should be consulted before taking a decision to give evidence.

Justices of the Peace who are asked to complete references or countersign documents should be aware that away from the 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. It is important to be mindful at all times of the perception that use of the JP suffix could create when signing a personal reference or other documents that have no connection with a Justice of the Peace's duties. Justices of the Peace who countersign certain applications (e.g. for passports or driving licenses) may use the JP suffix and give their occupation as "Justice of the Peace" as necessary to verify that they qualify under one of the recognised professions designated to countersign these documents.

Reporting Personal Involvement in Court Proceedings & Criminal Charges

All judicial office holders have an obligation to notify the Governor, 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)

A judicial office holder must notify the Governor if they are cautioned for, or charged with, any criminal offence. 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 judicial office holder to continue sitting while court proceedings are pending.

Civil proceedings

All judicial office holders have an obligation to report to the Governor their involvement in legal proceedings which are coming to court. This includes all civil proceedings (including family proceedings) and is to ensure that the Governor can give full and timely consideration to the

listing of the case and whether or not it would be appropriate for the judicial office holder to continue sitting whilst proceedings are ongoing.

Other proceedings

Judicial office holders must also notify the Governor 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 judicial office holders' duty to maintain the dignity of the office and not to permit associations which may affect adversely their ability to discharge their duties.

Social networking, blogging and Twitter (X)

Although there is no specific guidance on this matter, judicial office holders 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. Judicial office holders should try to ensure that information about their personal life and home address are not available online. A simple way to check is to type your name into an internet search engine such as Google. Care should also be taken both by the judicial office holder and their close family members and friends to avoid the judicial office holder's personal details from entering the public domain through social networking systems such as Facebook or Twitter.

Judicial office holders should also be wary of:

- Publishing more personal information than is necessary (particularly with a view to the risk of fraud).
- Posting information which could result in a risk to personal safety. For example, details of holiday plans and information about family.
- Automatic privacy settings. Often it is possible to raise privacy settings within social media forums.
- Lack of control over data once posted.
- Posting photographs of themselves in casual settings whether alone or with family members and/or friends.

Personal Relationships and Perceived Bias

Where a judicial office holder is affected by actual bias they must recuse themselves from taking any further part in the case. Such cases are very rare.

Judicial office holders should also recuse themselves where there might be a question as to whether there would be a perception that they might not be able to hear the case fairly (the apparent bias test). The test to be applied is whether a fair-minded observer, having considered the given facts, would consider there was a real possibility that the judicial office holder would be biased.

If there is any concern on the part of the judicial office holder as to whether the test applies the matter should be raised with the parties and submissions received and considered. Judicial office holders should, however, be careful not to agree to recusal where the grounds for such a course are tenuous, trivial or frivolous.

In general:

Judicial office holders should not sit on cases which involve family members, business associates or work colleagues or close friends.

Judicial office holders should not sit on cases in which they, or close family or close friends might have any interest, whether that be financial or otherwise.

Judicial office holders should avoid hearing cases in which one of the parties is represented by a close member of their family.

In a small society it is perhaps inevitable that Judicial office holders will have some knowledge of those who may appear before them. In addition, judicial office holders sitting on a case may have heard gossip or speculation about the parties that appear before them. Judicial office holders should decide cases on the evidence received by them in court, in accordance with the applicable law. They must be particularly careful to ensure that they do not take into account any information that they may have been given about a case or a litigant outside the courtroom. If they are unable to clearly put such matters out of their mind they should recuse themselves from hearing the case. Even if they are content that such knowledge would not influence them they should consider whether the apparent bias test is satisfied.

If a judicial office holder realises that there might be a conflict of interest after proceedings have commenced they should consider the matter and, if necessary, raise it at the first reasonable opportunity with the parties. Even if all parties waive any objection to continuing with the case this is only a factor to take into consideration and the decision as to whether to continue with the case or not is one for the particular judicial office holders themselves and should be taken with considerable care.

Although it must be recognised that the urgency of a situation may be such that a hearing is required in the interests of justice, notwithstanding the existence of arguable grounds in favour of disqualification, this course should only be taken in exceptional circumstances.

Behaviour towards court or tribunal staff, users and judicial colleagues

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 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 hearing do not put them at a disadvantage. Further guidance is given in the Judicial College’s *Equal Treatment Bench Book*. The duty remains on the judicial office holder to apply the law as it relates to allegedly discriminatory conduct. If judicial office holders are in doubt concerning meeting the adjustment needs of an advocate or party appearing before them, they should refer to their relevant leadership judge.

Annex A

The Bangalore Principles

The Bangalore Principles arose from a United Nations initiative in 2001, resulting in the drafting of a set of principles for judicial conduct by a number of senior judges and which was endorsed at the 59th session of the United Nations Human Rights Commission at Geneva in April 2003.

The stated intention of the Bangalore Principles 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 set out in *"six values"* which are as follows:

(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.

Annex B

The Falkland Islands Constitution

Oaths

Before entering upon the functions of his or her office, the Chief Justice, any acting judge of the Supreme Court, every judge of the Court of Appeal, and the Senior Magistrate shall make and subscribe before the Governor or some other person authorised for that purpose by the Governor, acting in his or her discretion, the oath of allegiance and the judicial oath set out in Annex B to this Constitution.

The Judicial Oath

Judicial oath- swear

I, (name), swear that I will well and truly serve His Majesty King Charles the Third, His Heirs and Successors, in the office of justice of the peace and will do right to all manner of people according to the Constitution and other laws in force in the Falkland Islands, without fear or favour, affection or ill will. So help me God.

Judicial oath- affirm

I, (name), do solemnly affirm that I will well and truly serve His Majesty King Charles the Third, His Heirs and Successors, in the office of justice of the peace and will do right to all manner of people according to the Constitution and other laws in force in the Falkland Islands, without fear or favour, affection or ill will.