

A Statement of Ethics
For the Judiciary in Northern Ireland

Lord Chief Justice's Office
28 February 2007

Foreword by the Lord Chief Justice of Northern Ireland, Sir Brian Kerr

Foreword

The Criminal Justice Review Group in Northern Ireland recommended that consideration be given to drawing up a statement of ethics for the judiciary in Northern Ireland. From 3 April 2006 the Lord Chancellor's function as Head of the Judiciary in Northern Ireland passed to me and I think it appropriate, therefore, to issue such a statement. I have done so following consultation with colleagues. The statement will come into effect immediately.

Court users and the public generally are entitled to expect holders of judicial office to maintain high standards of personal conduct. I am confident that members of the judiciary in this jurisdiction have demonstrated such standards in the past and will continue to do so. This statement, which is similar to those drawn up for the judiciary in other jurisdictions including England and Wales, sets out the principles and standards of conduct required of the judiciary. It seeks to build upon the Terms and Conditions of Service accepted by a judge when assuming office. It does not seek to replace these.

The primary responsibility for deciding whether a particular activity or course of conduct is appropriate rests with the individual judge, using his or her best judgment. I am available at any time if a colleague wants to seek advice on any matter concerning conduct. The statement is not intended to be prescriptive, except where otherwise stated, as there may be occasions when the overall interests of justice require a departure from the guidance in this document.

As mentioned, I consulted judicial colleagues before finalising the statement. I am grateful for the contribution that they have made which I have found invaluable. From time to time I will review the statement and may amend it in light of experience or any comments that I receive on it.

Brian Kerr
Royal Courts of Justice
28 February 2007

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1. BACKGROUND

- 1.1 The Criminal Justice Review Group in Northern Ireland recommended that consideration be given to drawing up a statement of ethics (recommendation 107). The Group considered that there might be advantage in the public having access to material on the standards required of the judiciary. It was originally suggested that the statement of ethics might be annexed to the annual report of the Judicial Appointments Commission for Northern Ireland. The Constitutional Reform Act 2005 transferred the Lord Chancellor's function as Head of the Judiciary in Northern Ireland to the Lord Chief Justice and, as a consequence, it was decided that the statement should be issued by the Lord Chief Justice's office. The JAC accepted that its role was limited to one of disseminating the statement to applicants for judicial appointment.
- 1.2 This statement applies to deputy as well as full-time and part-time members of the judiciary and to lay magistrates. All have been sent a copy or a link to the document. It is available on the intranet and the NI Court Service internet.

2. INTRODUCTION TO JUDICIAL ETHICS

- 2.1 In considering the need for stated judicial ethics, Mr. Justice Thomas wrote in 'Judicial Ethics in Australia' (1998):

"We form a particular group in the community. We comprise a select part of an honourable profession. We are entrusted, day after day, with the exercise of considerable power. Its exercise has dramatic effects upon the lives and fortunes of those who come before us. Citizens cannot be sure that they or their fortunes will not some day depend upon our judgement. They will not wish such power to be reposed in anyone whose honesty, ability or personal standards are questionable. It is necessary for the continuity of the system of law as we know it that there be standards of conduct, both in and out of court, which are designed to maintain confidence in those expectations."

(2nd ed. (1997) p9).

- 2.2 What have become known as the Bangalore Principles of Judicial Conduct were initiated in 2001 and were endorsed at the 59th session of the United Nations Human Rights Commission at Geneva in April 2003.

2.3 The Principles have six “values” and their stated intention is: “To establish standards for ethical conduct of judges”. They are designed to provide guidance to judges and to provide the judiciary with 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, which are essential to the proper discharge of the judicial office, are:

- **Judicial independence** - This 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;
- **Impartiality** - this applies not only to the decision itself but also to the process by which the decision is made;
- **Integrity;**
- **Propriety** (including the appearance of propriety);
- **Equality of treatment to all before the courts;** and
- **Competence and diligence.**

2.4 In the Bangalore guidance those principles are developed in a series of propositions set out under each of the six headings. In drafting this statement of ethics weight has been given to that statement of internationally recognised principles. These principles have long been fundamental aspects of the standard of conduct expected of judges in this jurisdiction.

3. JUDICIAL INDEPENDENCE

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

3.2 The judicial oath [or affirmation] provides:

“I do swear [or solemnly and sincerely and truly affirm] that I will well and faithfully serve in the office of And that I will do right to all manner of people without fear or favour, affection or ill-will according to the laws and usages of this realm.”

- 3.3 In taking that oath the member of the judiciary has acknowledged that he or she is primarily accountable to the law which he or she must administer.
- 3.4 The oath involves a requirement to be alert to, and wary of, subtle and sometimes not so subtle attempts to influence judges. Moreover, in the proper discharge of duties, the judge must be immune to the effects of publicity, whether favourable or unfavourable. That does not of course mean being unaware of the profound effect judicial decisions may have, not only on the lives of people before the court but sometimes upon issues of great concern to the public; concerns which may be reflected in the media.
- 3.5 Consultation with colleagues when points of difficulty arise is important in the maintenance of standards. In performing judicial duties, however, the judge shall be independent of judicial colleagues and solely responsible for his or her decisions.

4. IMPARTIALITY

- 4.1 A judge should strive to ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession, and litigants in the impartiality of the judge and of the judiciary. This should be read together with paragraph 3.4 above. Awareness of the media and public opinion is required, and a judge should act with due sensitivity. Such considerations, however, must not be allowed to influence the substance of judicial decisions.
- 4.2 The judge’s primary task and responsibility is to discharge the duties of office. It follows, therefore, that a judge should, so far as is reasonable, avoid extra-judicial activities that are likely to cause the judge to have to refrain from sitting on a case because of a reasonable apprehension of bias or because of a conflict of interest arising from the activity.
- 4.3 A specific application of that principle is that a judge must forgo any kind of political activity and, on appointment, sever all ties with political parties. An appearance of continuing ties by, for example, attendance at political gatherings, political fundraising events or

through contribution to a political party, should be avoided. The need for self-restraint also involves not participating in public demonstrations which, by associating the judge with a political viewpoint or cause, may diminish his authority as a judge and create in subsequent cases a perception of bias. Where a close member of a judge's family is politically active, the judge needs to bear in mind the possibility that, in some proceedings, that political activity might raise concerns about the judge's own impartiality and detachment from the political process. Given the sensitivity of political matters in Northern Ireland, particular care is required when considering association with any particular political party or cause.

- 4.4 Another application of the principle, though one that is difficult to define and apply in specific situations, is the expression of views out of court that would give rise to issues of perceived bias or pre-judgment in cases that later come before the judge. This question is considered in more detail in paragraph 9.7.
- 4.5 The question of whether an appearance of bias or possible conflict of interest is sufficient to disqualify a judge from hearing a case is the subject of Strasbourg, British, and Commonwealth jurisprudence, which will guide judges in specific situations. Recent English cases are listed in the annex. The Northern Ireland case, *Re McCaffrey* [2001] NI 379 is also worthy of note. Archbold on Criminal Pleading, Evidence and Practice [2007] also contains a useful summary on the issue at paragraph 16.74.
- 4.6 Circumstances will vary infinitely and guidelines can do no more than assist the judge in the decision to be made. The test is to be applied by considering whether the fair-minded and informed observer would perceive that there is a real possibility of bias. While the purpose of the guidance contained in this statement is to express general principles, it may help to provide some detail on issues known to have caused problems for judges for example, under the heading personal relationships and perceived bias (see paragraph 8 below).
- 4.7 If a judge, or to the knowledge of the judge a member of the judge's family (as defined below in paragraph 6.2), has any significant financial interest in the outcome of the case that will plainly disqualify him or her. Such a conflict may arise without the judge having an interest in the case to be tried if it involves a point of law which may affect the judge in his or her personal capacity. In taking the decision whether to hear the case, the judge should have regard to the nature and extent of his or her interest, and the effect whether actual or perceived of the decision on others to whom he or she is related.

- 4.8 If a judge is known to hold strong views on topics relevant to issues in the case, by reason of public statements or other expression of opinion on such topics, this may make it unsuitable for him or her to hear the case whether or not the matter is raised by the parties. It will seldom, if ever, arise from what a judge has said in other another case.
- 4.9 Judges should, however, be astute to identify and prevent attempts to use procedures for disqualification illegitimately. If the mere making of an insubstantial objection were sufficient to lead a judge to decline to hear a case, parties might be encouraged to attempt to influence the composition of the bench or to cause delay and the burden on colleagues would increase. A previous finding or previous findings by the judge against a party, including findings on credibility, will rarely provide a ground for disqualification. The possibility that the judge's comments in an earlier case, particularly if offered gratuitously, might reasonably be perceived as personal animosity, cannot be excluded but such a possibility is likely to occur only very rarely. A judge should take great care not to give even the appearance of personal animosity. In this context it should be noted that a judge is not obliged to ignore past experience of the conduct of a party's legal representative but any opinion a judge may form in respect of particular advocate must not be allowed to cause any unfairness to any party.
- 4.10 If circumstances which may give rise to a suggestion or appearance of bias are present and are to be disclosed to the parties, this should be done, if possible, well before the hearing. Case management procedures should allow this to be done. Disclosure of a possible conflict, if followed by recusal on the day of the hearing, will almost certainly involve additional costs for the parties and will frequently cause listing difficulties. It must, however, be acknowledged that listing arrangements in some courts may not allow advance notification to be given. Disclosure on the day of the hearing will on occasions be inevitable. The judge should bear in mind the difficult position in which parties and their advisers may be placed by disclosure on the day of hearing, when making a decision whether to proceed.
- 4.11 Disclosure should of course be to all parties and, save when the issue has been resolved by correspondence before the hearing, discussion between the judge and the parties as to what procedure to follow should normally be in open court, unless the case itself is to be heard in chambers. The judge may, however, prefer that discussion of his or her private interests takes place in chambers. This is understandable and perfectly acceptable, provided a suitable note of such discussion, and the outcome, is placed on the record. The consent of the parties is

a relevant and important factor, but the judge should avoid putting them in a position in which it might appear that their consent is sought to remove a ground of disqualification. Even where the parties consent to the judge sitting, if on balance the judge considers that recusal is the proper course, the judge should act accordingly. 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.

- 4.12 A judge is entitled to keep in mind his or her general duty to try the cases in his or her list, and the listing burden and delay which may be occasioned by a recusal. Moreover, it must be recognised that the urgency of the situation may be such that a hearing is required in the interests of justice notwithstanding the existence of arguable grounds in favour of disqualification.

Deputy Judges/ RMs

- 4.13 Deputy Judges have the same general obligation as full time members of the judiciary to maintain the status and dignity of the office of judge and to be alert to the possibility that outside activities, including political activities, may create a perception of bias when dealing with particular cases. Judgment is required in striking a balance between maintaining that status and dignity and the reasonable requirements of a legal practice. They also need to be alert to the difficulty of sitting in cases in which their firm is represented or is closely associated with.

5. INTEGRITY

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

as merely unfortunate if engaged in by someone who is not a judge might be seen as unacceptable if engaged in by a person who is a judge and who, by reason of that office, has to pass judgment on the behaviour of others.

- 5.3 A judge's conduct in court should uphold the status of judicial office, the commitment made in the judicial oath, and the confidence of litigants in particular and the public in general. The judge should seek to be courteous, patient, tolerant and punctual and should respect the dignity of all. The judge should ensure that no one in court is exposed to any display of bias or prejudice on grounds said in the Bangalore principles to include, but not be limited to, "race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes." There should be no bias or prejudice on those grounds, which are described in the principles as "irrelevant grounds." In cases involving those with a disability, or young persons particular care should be taken that arrangements made for a Court hearing do not place them at a disadvantage. Further guidance is given in the Judicial Studies Board for England and Wales Equal Treatment Bench Book (www.jsboard.co.uk). The duty of course remains on the judge to apply the law as it relates to allegedly discriminatory conduct.
- 5.4 In this context, awareness of the various categories of person specified by section 75 of the Northern Ireland Act 1998 will be of assistance. Judges should be aware of the needs of, and differences between, the various groups within these categories, to enable them to act with due sensitivity and to avoid unintentionally causing offence or disadvantage. A careful balance needs to be struck to ensure that all persons are treated equally and sensitively, while at the same time avoiding an unreasonable impact on the effective functioning of the court.

6. PROPRIETY

- 6.1 The section of the Bangalore principles under this heading is adopted in this document. Some of the guidance is so obvious that inclusion may appear unnecessary, but the statement is a useful and general reminder and should assist judges. Paragraph xii does not apply to deputy judges.
- i. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
 - ii. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as

burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

- iii. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- iv. A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- v. A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.
- vi. A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
- vii. A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.
- viii. A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
- ix. A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
- x. Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.

- xi. Subject to the proper performance of judicial duties, a judge may:
 - Write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
 - Appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
 - Serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or
 - Engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
- xii. A judge shall not practise law whilst the holder of judicial office.
- xiii. A judge may form or join associations of judges or participate in other organisations representing the interests of judges.
- xiv. A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

6.2 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions. Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

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

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

“Judge’s spouse” includes:

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

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.”

7.2 This requires the judge to take reasonable steps to maintain and enhance the 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.

7.3 Beyond stating those general propositions, it is not seen as the function of this guide to consider judicial duties and practice with respect, for example, to case management, the timing and style of judgments and what is required of a judge by way of attendance at judicial seminars. These topics, insofar as guidance is required, will be addressed by the Judicial Studies Board or the Lord Chief Justice’s Office.

INTRODUCTION TO PARAGRAPHS 8 TO 10

Paragraphs 8 to 10 consider a number of specific problems a judge, including a deputy judge, may have to face, always within the framework of the law and the guiding principles. Naturally all judges should keep up to date with the state of the law in this area. A new appointee will, prior to appointment, have an interview to discuss his or her interests and any possible conflict issues. This will be an opportunity for the appointee to obtain initial advice on such matters in relation to the judge’s specific circumstances.

8. PERSONAL RELATIONSHIPS AND PERCEIVED BIAS

8.1 This is a subject where the situations which may arise are so varied that great reliance must be placed on the judgment of the judge, applying the law, his or her judicial instincts, and conferring with a colleague

where possible and appropriate. The judgment of the Court of Appeal in *Locabail (U.K.) Ltd v Bayfield Properties Ltd* provides authoritative guidance (see particularly paragraph 25). Relevant relationships may exist with parties to litigation, legal advisers or representatives of parties, and witnesses.

- 8.2 There are few hard and fast rules. Signposts for guidance, in some of the situations which may arise, are provided in this paragraph and in paragraph 9.
- 8.3 A judge should not sit on a case in which the judge has a close family relationship with a party or the spouse or domestic partner of a party.
- 8.4 Personal friendship with, or personal animosity towards, a party is also a compelling reason for disqualification. Friendship may be distinguished from acquaintanceship which may or may not be a sufficient reason for disqualification, depending on the nature and extent of such acquaintanceship.
- 8.5 A current or recent business association with a party will usually mean that a judge should not sit on a case. A business association would not normally include that of insurer and insured, banker and customer or ratepayer and council. Judges should also disqualify themselves from a case in which their solicitor, accountant, doctor, dentist or other professional adviser is a party in the case.
- 8.6 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.
- 8.7 The fact that a relative of the judge is a partner in, or employee of, a firm of solicitors engaged in a case before the judge does not necessarily require disqualification. It is a matter of considering all the circumstances, including the extent of the involvement in the case of the person in question.
- 8.8 Past professional association with a party as a client need not in itself be a reason for disqualification, but the judge must assess whether the particular circumstances, and in particular any prior knowledge relevant to the case, could create an appearance of bias.
- 8.9 Where a witness (including an expert witness) is personally well known to the judge all the circumstances should be considered including whether the credibility of the witness is in issue, the nature of the issue to be decided, and the closeness of the friendship before a

decision is made as to whether the judge should continue to hear the case.

- 8.10 A judge should not sit on a case in which a member of the judge's family (as defined in the Bangalore principles) appears as advocate.

9. ACTIVITIES OUTSIDE THE COURT

The Media

- 9.1 The basic position in relation to the media is set out in the Terms and Conditions of service and the Lord Chief Justice's Guidance on High Profile Cases etc (issued in May 2006). Judges are free to talk to the media, but should exercise this freedom with 'the greatest circumspection.' Lord Bingham has commented that 'a habit of reticence makes for good judges'. A judge should refrain from answering public criticism of a judgment or decision, whether from the bench or otherwise. Judges should not air disagreements over judicial decisions in the press. In his speech in the House of Lords on 21 May 2003, Lord Woolf CJ referred to "the very important convention that judges do not discuss individual cases".
- 9.2 Guidance on contact with the media was circulated by the Lord Chief Justice in May 2006 and further assistance may be obtained through the Lord Chief Justice's Office.
- 9.3 If a judge's remarks are factually misrepresented, and correction is desirable, this should be brought to the attention of the Lord Chief Justice's Office. If necessary a statement of correction, covering only factual matters, may be issued. Prevention is of course preferable, and, if a particular case has attracted or is likely to attract significant media attention, a judge should consider issuing written sentencing remarks or providing a transcript immediately after the hearing.
- 9.4 If a judge is considering accepting a request for an interview, this matter should be raised with the Lord Chief Justice's Office. It is necessary to establish the nature of the publication or broadcast, the format of the interview, and the topics to be covered. If information on these matters is not forthcoming or there is any other reason for concern, the invitation should be declined. While many judges have considerable experience in public speaking, a media interview is likely to place the judge in a very different situation from that to which he or she is accustomed. Guidance on how best to approach the interview will be available through the Lord Chief Justice's Office should a request be accepted.

- 9.5 Libel action in relation to the reporting of judicial comments should be considered only as a last resort. If a judge is particularly aggrieved about an article or broadcast, this should be brought to the attention of the Lord Chief Justice's Office at the earliest opportunity and certainly before any action is taken.
- 9.6 The Press Complaints Commission¹ and the Broadcasting Standards Commission² have published codes of conduct to which a judge may wish to refer if he or she considers a particular report to be objectionable.

Participation in Public Debate

- 9.7 Subject to the above, many aspects of the administration of justice and of the functioning of the judiciary are the subject of necessary and legitimate public consideration and debate in the media, legal literature, and at public meetings, seminars and lectures. Appropriate judicial contribution to this consideration and debate is desirable. It should contribute to the public understanding of the administration of justice and to public confidence in the judiciary. At the least, it may help to dispel misunderstandings and correct false impressions. There is no objection to such participation provided the issue directly affects the operation of the courts, the independence of the judiciary or aspects of the administration of justice. The Lord Chief Justice's office should be informed of such participation and is available to give advice.
- 9.8 Care should be taken, however, about the place at which, and the occasion on which, a judge speaks so as not to cause the public to associate the judge with a particular organisation, group or cause. The participation should not be in circumstances which may give rise to a perception of partiality towards the organisation (including *e.g.* a firm of solicitors), group or cause involved or of a lack of even-handedness.
- 9.9 Moreover, it should be borne in mind that the dialogue may not take the form which the judge would consider appropriate in court proceedings. The judge may not be able to join in and leave the debate on the judge's terms. The risk of different judges expressing conflicting views in debate must also be borne in mind in that a public conflict between judges, expressed out of court, may bring the judiciary into disrepute and diminish the authority of the court.
- 9.10 There are plainly risks in a judge, whether exercising a criminal or a civil jurisdiction, being exposed to public debate in such a way that the authority and status of the judicial office may be undermined.

¹ www.pcc.org.uk/press/detail.asp?id=140

² www.ofcom.org.uk/static/archive/bsc/pdfs/research/Fairness%20Code.pdf

Consultation with the Lord Chief Justice's Office will almost always be desirable. The risk of expressing views that will give rise to issues of bias or pre-judgment in cases that later come before the judge must also be considered.

Commercial Activities

- 9.11 The requirements of office clearly place severe restraints upon the permissible scope of a judge's involvement with commercial enterprises. Guidance appears in the decided cases as to the extent to which a judge is entitled to pursue commercial activities. The judge's terms of appointment set out the basic position in this regard.
- 9.12 The management of family assets and the estates of deceased close family members, whether as executor or trustee, is unobjectionable, if the administration is not complex, time consuming or contentious. The risks, including the risk of litigation, associated with the office of trustee, even of a family trust, should not be overlooked, however, and the factors involved need to be weighed carefully before such an office or role is accepted.

Involvement in Community Organisations

- 9.13 Prior to their appointment, many judges have been actively involved in community organisations, particularly educational, charitable and religious organisations. While continuing such involvement is encouraged by the Lord Chief Justice, and may confer a public benefit, care should be taken that it does not compromise judicial independence or put at risk the status or integrity of judicial office. Such activities should not be so onerous or time consuming as to interfere with the judge's performance of his or her duties and the judge's role should not involve active business management. The judge should consider carefully the organisation in question and any associated organisations, and should be aware of the capacity for seemingly unaligned organisations to have political connotations in Northern Ireland. Subject to the above, however, judicial involvement in the community is encouraged. In addition to other benefits, such involvement can help to avoid a perception that members of the judiciary are remote or out of touch, and can therefore increase public confidence. If a judge is in any doubt as to the appropriateness of his or her involvement in a particular event or organisation, the judge should contact the Lord Chief Justice's Office.
- 9.14 Judges may properly be involved in the management of educational, charitable and religious organisations and trusts subject to the reservation already stated in relation to community organisations.

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

- 9.15 Many judges hold or have held high office in governing bodies of universities and similar institutions without embarrassment, notwithstanding that the management and funding structures of such organisations are complex, and are often the subject of public debate and political controversy. It is necessary to limit and regulate the nature and extent of personal involvement in contentious situations. Moreover, in considering whether to accept office and what role to play, consideration should be given to the trend of some such bodies to be more entrepreneurial and to resemble a business. The greater the move in that direction, the less appropriate judicial participation may be. Any conflict of interest in a litigious situation must of course be declared.

References

- 9.16 There is no objection in principle to a judge giving references as to character or professional competence for persons who are well known to the judge. Consideration should be given as to whether the judge is the appropriate person to give the reference requested, the principle being that someone should not be deprived of a reference because the person best able to give it is the judge. Plainly judges should guard against agreeing to inappropriate requests.
- 9.17 Giving character evidence in court or otherwise is not excluded, particularly where it may seem unfair to deprive the person concerned of the benefit of such evidence, but the task should be undertaken only exceptionally because of the risks inherent in the judge entering the arena, albeit for a limited purpose, and the pressure such evidence may put on the trial judge or magistrate. Consultation with the Lord Chief Justice's Office is advisable before taking a decision to give evidence.

Remuneration

- 9.18 Provisions relating to remuneration are stated in the terms of appointment. In addition to a judicial salary, a full-time judge should not receive any remuneration except for fees and royalties earned as an author or editor. A judge may of course receive money from investments or property.

Business cards, etc.

- 9.19 It is not appropriate for someone who sits as a deputy judge to describe him or herself as such on a business card, chequebook or letterhead.

Gifts, Hospitality and Social Activities

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

- 9.21 The acceptance of a gift or hospitality of modest value (*e.g.* a book or flowers), 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 explained in the terms and conditions:

“The Lord Chief Justice regards it as inappropriate for a judge to receive a fee personally for giving a lecture. However, where a judge gives a lecture for a commercial undertaking there is no objection, if he considers that it would be appropriate, to his requesting that any fee otherwise payable be paid to a charity of his choice. To avoid any liability for tax, a judge should try to ensure that payment is made direct to the charity. Where this is not possible, *e.g.* accounting reasons, and the charity would otherwise lose out, a judge may accept the payment himself, provided that he is prepared to pay the tax on that sum and make the payment directly to the charity himself. There is no objection to a judge accepting reimbursement of the cost of any necessary travel and accommodation necessitated by attending a suitable lecture, conference or seminar.”

- 9.22 By way of further example, the acceptance of invitations to lunches and dinners by legal and other professional and public bodies or officials,

where attendance can be reasonably seen as the performance of a public or professional duty, carrying no degree of obligation is entirely acceptable.

- 9.23 Caution should be exercised when invited to take part in what may be legitimate marketing or promotional activities, for example by solicitors' firms, or professional associations, where the object of judicial participation may be perceived to be the impressing of clients or potential clients. While this should not necessarily prevent participation, it should be remembered that members of the judiciary should not, without good reason, favour one provider over another.
- 9.24 Judges must not exploit the status and prestige of judicial office to obtain personal favours or benefits.
- 9.25 Where a judge is in doubt as to the propriety of accepting any gift or hospitality he or she should seek the advice of the Lord Chief Justice's Office.
- 9.26 Books and journals: The writing of books and articles and the editing of legal textbooks outside normal working hours are not, in principle, incompatible with holding judicial office and there is no objection to the acceptance of royalties or fees for doing so. Legal and technical books and articles do not normally give rise to difficulties but it may sometimes be advisable for a member of the judiciary not to write on a subject of wider or more general public interest.
- 9.27 The editorship of a journal is generally considered incompatible with judicial office since this involves a regular commitment. Furthermore, journals provide platforms for opinions and, as such, they represent a potential source of avoidable conflict. Where a judge is in doubt about the propriety of writing a book or article or editing a journal he or she should seek the advice of the Lord Chief Justice's Office.
- 9.28 Requests for research facilities: From time to time members of the judiciary receive requests for research facilities, such as access to court records or interviews with researchers. All requests should be referred to the Lord Chief Justice's Office to ensure that they are treated consistently. In considering such requests, the Lord Chief Justice will have regard to the likely value of the proposed research and the extent of the burden it might impose on the judiciary or court staff.
- 9.29 Contact with the Profession: There is a long-standing tradition of association between bench, the bar and the solicitors' profession. This occurs both on formal occasions, such as dinners, and less formal ones. One caveat has already been stated in paragraph 9.23. Another caveat

to maintaining a level of social friendliness with the profession, one dictated by common sense, is to avoid direct association with individual members of the profession who are engaged in current or pending cases before the judge. There will be cases in which retaining too close a social relationship with a practitioner who regularly has litigation before the judge's court may create a perception of bias but what is appropriate will depend upon the particular circumstances.

- 9.30 Other Social Activities: Social activities need to be assessed in the light of the judge's duty to maintain the dignity of the office and to refrain from associations which may affect adversely the judge's ability to discharge his or her duties.

Use of Equipment

- 9.31 A judge should not use equipment, including IT equipment, provided by the Court Service for his or her use as a judge, for purposes which could bring the judge or the judiciary in general into disrepute. Detailed guidance on the use of IT equipment, including the importance of not compromising security, has been issued by the Lord Chief Justice's Office.

10. RETIREMENT/RESIGNATION

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

ANNEX: RECENT ENGLISH CASES DEALING WITH BIAS OR CONFLICT OF INTEREST

- *AWG Group Ltd v Morrison* [2006] 1 All ER 967
- *Gillies v Secretary of State for Work and Pensions* [2006] UKHL 2
- *Smith v Kvaerner Cementation Foundations Ltd* [2006] EWCA Civ 242
- *Lawal v Northern Spirit Ltd* [2003] UKHL 35.
- *Locabail (UK) Ltd v Bayfield Properties Ltd* [2002] QB 451
- *M v Islington LBC* [2002] 1 FLR 95
- *Re Medicaments and Related Classes of Goods (No.2)*[2001] 1 WLR 700
- *R v Bow Street Magistrates ex parte Pinochet (No.2)* [2000] 1 AC 119