

**STATEMENT OF PRINCIPLES OF JUDICIAL  
ETHICS  
FOR THE SCOTTISH JUDICIARY**

**Revised December 2016**

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## **FOREWORD**

The Statement of Principles of Judicial Ethics for the Scottish Judiciary was framed in 2010, after consultation, by the Judicial Council for Scotland. It was drafted by a working group of judges under the chairmanship of The Rt. Hon Lord Osborne.

The Statement gives guidance in the light of which judges will make their own decisions. It does not provide an answer to every ethical question with which a judge may be confronted, nor does it prescribe a code of conduct.

I hope that the Statement will also inform the public of the principles by which judicial office holders are guided in their professional and private lives.

The working group proposed that the Statement should be subject to regular review. The text of the Statement was revised by the Judicial Council in May 2013 and in May 2015.

**May 2015**

**Lord President**

# STATEMENT OF PRINCIPLES OF JUDICIAL ETHICS FOR THE SCOTTISH JUDICIARY

## 1. INTRODUCTION

1.1 While the Scottish Judiciary have an honourable tradition of the attainment of high standards of judicial conduct, that has been achieved without the benefit of written guidance. However, in recent years, written guidance has been developed in many other jurisdictions. Furthermore, a recognition of the need for such guidance in relation to judicial conduct has emerged in the international context with the development of the *Bangalore Principles of Judicial Conduct*, endorsed at the 59<sup>th</sup> session of the United Nations Human Rights Commission at Geneva in April 2003. Against this background, it is considered that it is now appropriate for such guidance to be available in Scotland. To that end this document has been devised, after consultation, by the Judicial Council for Scotland. It is intended that, from time to time, it should be reviewed in the light of experience and changing circumstances.

1.2 There are several sources from which the ethical standards that should be observed by judges derive. First, the terms of the judicial oath, taken by judges in Scotland on their appointment, require the judge to “do right to all manner of people after the laws and usages of this Realm, without fear or favour, affection or ill-will”. Second, there is an undoubted public interest in the maintenance of respect for the law and the judges who apply it. Third, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms confers the

right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Furthermore, it is also appropriate to bear in mind the lucid observations of Mr Justice Thomas, a Judge of the Supreme Court of Queensland in *Judicial Ethics in Australia*, 2<sup>nd</sup> edition (1997) p.9, which have implications far beyond that jurisdiction. There, of judges, he said:

“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.”

- 1.3 In the development of this document, importance has been attached to the components of the *Bangalore Principles* themselves and therefore acknowledgement is due to those responsible for their formulation. We would also wish to acknowledge our debt to those who compiled the *Guide to Judicial Conduct*, issued by the Judges’ Council of England and Wales. The guidance which follows in this document has been formulated particularly in the light of these sources and relevant Scottish factors.

1.4 As regards the character of what follows, it must be emphasised that it is not intended to be prescriptive, like the contents of a statute; rather it is of the nature of guidance and should be seen as such. It is also hoped that it may draw to the attention of judges areas of particular sensitivity. It is therefore not to be supposed that an answer to every ethical question by which a judge may be confronted is to be found here. To achieve that would be impossible. As was pointed out in the *Guide to Judicial Conduct* compiled by the Judges' Council of England and Wales, paragraph 1.6.2:

“The primary responsibility for deciding whether a particular activity or course of conduct is appropriate rests with the individual judge and what follows is not intended to be prescriptive, unless stated to be. There may be occasions when the overall interests of justice require a departure from propositions as literally stated in the guide. It is also acknowledged that there is a range of reasonably held opinions on some aspects of the restraints that come with the acceptance of judicial office.”

## **2. THE SCOPE OF APPLICATION OF THIS STATEMENT OF PRINCIPLES**

2.1 It is hoped that the principles set out in this guide will be of assistance to all judicial office holders exercising their offices within Scotland. These comprise:

- (a) All judges of the Court of Session, whether sitting in that court, or as judges of the High Court of Justiciary, or as members of any other court in which such judges may sit;
- (b) Sheriffs Principal whether sitting in the sheriff court, or in a judicial capacity in any other context;
- (c) Sheriffs;
- (d) The Chairman and other members of the Scottish Land Court;
- (e) Temporary judges, or retired judges of the Court of Session;
- (f) Acting Sheriffs Principal;
- (g) Part-time Sheriffs;
- (h) Summary Sheriffs;
- (i) Part-time Summary Sheriffs; and
- (j) Justices of the Peace
- (k) Ordinary and Legal Members of the Scottish Tribunals

It is considered that certain of the restraints that must be accepted by the holders of full-time judicial appointments cannot reasonably be imposed upon the holders of part-time appointments. For that reason, in what follows, a distinction has been made between the holders of full-time and part-time appointments. It should be assumed that any particular guidance is applicable to all judicial office-holders, unless it is specifically stated to be limited in application either to the holders of full-time, or part-time, judicial appointments, as the case may be. In this connection, the words “full-time judicial appointments” are intended to include all salaried appointments. For the sake of convenience, all judicial office holders are referred to here as “judges”. In the text, reference is made to “a judge’s family”. That expression is intended to include the judge’s spouse or civil partner, child, including child by affinity, or adoption, and any other person who forms part of the same household as the judge, who is a close relative, companion or employee. A judge’s “spouse or civil partner” is intended to include any person who is in a relationship with the judge which, but for the absence of marriage or civil partnership has the character of a relationship between two persons who are married, or in a civil partnership. A reference to the “Head of the Judiciary” is a reference to the Lord President of the Court of Session.

2.2 Recognising that formerly there has been a tradition whereby Justices of the Peace and part-time fee-paid judges or members of some tribunals have been regarded as free to have party political involvement, in the form of membership of, or the lending of active support to, a political party, and the formulation of this Statement not being intended to alter that tradition, it is to

be understood that the guidance in paragraph 4.5 below does not apply to such persons. However, they should ensure consistently with paragraph 4.2 below, that any party political involvement they may have does not impinge upon the performance of their judicial function.

### 3. THE SIX BANGALORE PRINCIPLES THEMSELVES

3.1 These are stated in this way:

- (1) Judicial independence is a pre-requisite 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.
- (2) 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.
- (3) Integrity is essential to the proper discharge of the judicial office.
- (4) Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.
- (5) Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.
- (6) Competence and diligence are pre-requisites to the due performance of judicial office.

3.2 It will be appreciated that there may be some degree of overlap as between guidance derived from one of these principles and that derived from another. However, that is inherent in the scope of the principles.

Nevertheless, it is considered that they constitute a clear focus for the arrangement of appropriate guidance.

#### 4. JUDICIAL INDEPENDENCE

- 4.1 Judicial independence is a cornerstone of our system of government in a democratic society and a safeguard for the freedom and rights of the citizen under the rule of law. That independence is not a reflection of the personal privilege of a judge, but is the constitutional right and expectation of every citizen in a democracy. The judiciary, whether viewed as a whole, or as its individual members, must be and be seen to be independent of the legislative and executive arms of government. The relationship between the judiciary and the other arms of government, however, should be one of mutual respect, each recognising the proper rôle of the others. Accordingly, judges should always take care that their conduct, official or private, does not undermine their institutional or individual independence, or the public appearance of that independence. Judges themselves should be vigilant to identify and resist any attack upon that independence, by whomsoever or by whatever means.
- 4.2 Judicial independence implies that any judge shall exercise the judicial function on the basis of the judge's own assessment of the facts of the case, in accordance with a conscientious understanding of the law, and without reference to any extraneous influences, whether inducements, pressures, threats, or other interference, direct or indirect, from any quarter, or for any reason. Thus a judge should be immune to the effects of publicity, whether favourable or unfavourable. However, that does not mean being immune to an awareness of the profound effect that judicial decisions may have, not only upon the lives of people before the

court, but sometimes upon issues of great concern to the public in general.

- 4.3 For any judge, consultation with colleagues when points of difficulty arise is of great assistance and important in the maintenance of standards. However, in actually performing judicial duties, the judge must be independent of judicial colleagues and is solely responsible for his or her own decisions, which that judge is obliged to make independently, save where sitting with another judge or judges. In the latter situation, the judge may contribute to a collective decision of the court, dissent from it, or express his or her own opinion, as the case might be.
- 4.4 The principle of judicial independence requires the acceptance of certain restraints upon the extent to which a judge may be involved in other interests. There is normally no objection to any judge holding shares in commercial companies, or enjoying the proceeds of other ordinary investments, or the benefits or profits of property owned by him or her. However, there is a long-standing tradition that no judge with a full-time appointment should hold a commercial directorship. This restraint applies to any directorship in an organisation the primary purpose of which is profit-related. It applies whether the directorship is in a public or private company, and whether or not it is remunerated. This restraint would, for instance, apply to the holding of a directorship in a professional sporting body or in any similar organisation having a commercial ethos. Any person holding such a directorship is therefore expected to resign from it on appointment to full-time judicial office.

- 4.4.1 The only recognised exception to this rule is that such a judge may properly take part in the management of family assets, including land or family businesses, and may hold a directorship in a private company for this purpose, or in a company formed for the management of property in which he or she has a common interest. However, caution should be exercised even where private companies are solely owned by the judge and his or her family.
- 4.4.2 A judge with a full-time appointment may continue to hold directorships or otherwise play a role in organisations the primary purpose of which is not to carry on business with a view to profit and the activities of which are of an uncontroversial character. Such a judge might for example continue to participate, whether as a director or otherwise, in the governing body of a sport, or a charitable or other body, where he or she is satisfied that the primary purpose of that body is not to carry on business with a view to profit and that its aims and activities are non-controversial. In considering, on appointment as a judge, whether to continue to hold such an office, or to resign from it, consideration should be given to these matters.
- 4.4.3 However, if any judge becomes or remains involved in a sporting, charitable or other body, including holding a directorship of such a body, he or she should continue to be on guard against circumstances arising which might be seen to cast doubt upon his or her independence. Similarly, a judge should normally avoid accepting appointment to, or participating in, a disciplinary panel or similar body of any sporting, charitable or other organisation where it is considered that the purpose

sought to be served is to lend the respectability of the office of a judge, or the reputation of the individual judicial office holder, to the activities of that organisation, or might be seen to cast doubt on his or her independence or involve him or her in a matter of controversy.

4.4.4 These distinctions may not always be clear and if in doubt the judge should seek advice from the Judicial Office.

4.4.5 There can be no objection to a judge participating, as a commissioner, governor, trustee or the like, in the work of any statutory or public body, in circumstances where the law requires or authorises such participation.

4.5 It is a cardinal feature of judicial independence that a judge should have no party political involvement of any kind, other than the exercise of his or her right to vote. If, at the time of appointment, a judge is a member of any political party or organisation, such a tie should then be severed. An appearance of continuing ties, such as might arise from attendance at political gatherings, political fundraising events, or the making of a pecuniary contribution to a political party, should be avoided. Furthermore, a judge should do nothing which could give rise to any suggestion of political partisanship, such as involvement in party political controversy. Also, a judge should not participate in public demonstrations or protests which, by associating the judge with a political viewpoint or cause, may diminish his or her authority as a judge and create, in subsequent cases, a perception of bias. Political involvement on the part of a member of the family of a judge is not objectionable, provided that the judge remains aloof from it.

4.6 Many aspects of the administration of justice and the functioning of the judiciary are the subject of public consideration and debate in a range of contexts. Appropriate judicial contribution to this consideration and debate may be desirable. It may contribute to the public understanding of the administration of justice and to public confidence in the judiciary. However, care should be exercised to ensure that such contribution remains within proper bounds. In this connection, it should be borne in mind that a judge should avoid involvement in political controversy, unless the controversy itself directly affects the operation of the courts, the independence of the judiciary, or the administration of justice. It should also be appreciated that the place at which, or the occasion on which a judge speaks may cause the public to associate the judge with a particular organisation, interest group, or cause, which is to be avoided. Further, judges may hold conflicting views on such matters; in these circumstances, the expression of a collective judicial viewpoint may be the preferable course, in order to avoid the damaging effect of open controversy between judges. That viewpoint should normally be expressed by the Head of the Judiciary, or an office-holder in any recognised association of judges.

4.7 A judgment may attract unfair, inaccurate or ill-informed comment, or criticism, which may reflect upon the competence, integrity or independence of a judge or the judiciary. However, a judge should never comment publicly upon his or her own judgment once it has been published, even to clarify supposed ambiguity in it, save where authorised by statute to do so. Should a public response be appropriate

it should normally come from the Head of the Judiciary, or authorised Tribunal Judge, as may be appropriate. However, nothing said here should be understood as inhibiting appropriate comment, whether critical or otherwise, upon a judgment within the context of the appeal process. Nevertheless, even in that context, an appeal court judge should always exercise courtesy and discretion when commenting upon the opinions of colleagues. To disregard this principle may undermine the confidence of the public and of the legal profession in the judiciary.

- 4.8 A judge holding a full-time judicial appointment should not normally accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy relating to matters other than the improvement of the law, the legal system, or the administration of justice. However, it is consistent with judicial office for any judge to serve in these capacities if the reason for the appointment is the need to harness to the task in question the special skills which a judge possesses, characteristically the ability to dissect and analyse evidence, appraise witnesses, exercise a fair and balanced judgement and write a clear and coherent report. However, he or she should not accept such an appointment where it is considered that the purpose sought to be served by it is to lend the respectability of the office of a judge, or the reputation of the holder, to some political end not acceptable to the public as a whole.
- 4.9 While attempts to corrupt the judiciary are virtually unknown in this jurisdiction, a judge should be circumspect in the acceptance of any gift, hospitality, or favour from any private source. Where the benefit sought

to be conferred upon the judge is not commensurate with an existing family or social relationship between him or her and the donor, or host, it should normally be declined. However, it is recognised that a judge may, from time to time, legitimately be entertained by legal, professional or public organisations or office-holders, in furtherance of good relations between them and the judiciary as a whole, or representatives of it. Furthermore, nothing said here should be understood as inhibiting judges from accepting invitations to give lectures, addresses, or speeches of a non-legal nature at dinners, or other occasions, or, in such an event, from accepting commensurate hospitality, tokens of appreciation for their efforts, or appropriate expenses of travel or accommodation.

## 5. THE PRINCIPLE OF IMPARTIALITY

- 5.1 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 the judiciary. Because a judge's primary task and responsibility is to discharge the duties of office, it follows that he or she should, so far as is reasonable, avoid extra-judicial activities that are likely to cause the judge to have to refrain from sitting in a case, because of a reasonable apprehension of bias, or because of a conflict of interest that would arise from the activity. Thus, for example, a judge should take care about the place at which and the occasion on which he or she speaks publicly, so as not to cause the public to associate the judge with, or create the perception of partiality towards, any particular organisation, group, or cause. If a judge is in doubt about the appropriateness of involvement in any particular extrajudicial activity, it may be prudent to consult the Head of the Judiciary.
- 5.2 A judge should be aware that extra-judicial activities referred to above extend to their online presence. A judge should be wary of publishing online more personal information than is necessary. Judges are advised not to sign up to social media sites such as Facebook or twitter and should exercise extreme caution in discussing both judicial and personal matters. Should a judge engage in online communication the judge should be aware that online discussions are not private, comments can be copied and have an unintended longevity. The spread of information and technology means that it is increasingly easy to undertake 'jigsaw'

research which allows individuals to piece together information on a judge from various independent sources. Judges are directed to the terms of the IT & Information Security Guide for Judicial Office Holders in Scotland issued by the Lord President on 28 February 2012.<sup>1</sup>

- 5.3 Plainly it is not acceptable for a judge to adjudicate upon any matter in which he, or she, or any members of his or her family has a pecuniary interest. Furthermore, he or she should carefully consider whether any litigation depending before him or her may involve the decision of a point of law which itself may affect his or her personal interest in some different context, or that of a member of his or her family, or the interest of any business in which a judge holding a part-time appointment may be involved. It may be that the pecuniary interest which a judge, or a member of his or her family, may possess in the outcome of some particular litigation is so limited that the litigants would have no objection to the judge handling the case. An example of such an interest might be the holding of shares in a public company, which is involved in litigation. In such a case, it may be reasonable for the interest to be declared, thus affording litigants the opportunity of objecting to his or her handling of the case. Where litigants have no objection to such an interest, it is conceived that normally the interest declared can thereafter properly be ignored. However, on the other hand, there may be exceptional circumstances in which a declared interest, to which litigants do not object, is nevertheless of such a nature as to cause the judge to decline to proceed, although it is thought that such situations will be rare.

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<sup>1</sup> Inserted following Judicial Council meeting 24 May 2013

5.4 Where there exists some reason, apart from pecuniary interest, why a judge should not handle a case on its objective merits, or may reasonably appear to be unable to do so, he or she should recuse himself or herself. Thus, for example, a meaningful acquaintance with a litigant, or a person known to be a significant witness in the case might constitute such an objection. Other examples of such reasons are set out in the judgment of the court in *Locabail (U.K.) Ltd v Bayfield Properties Ltd* (C.A.) [2000] Q.B. 451 at page 480. Further, recusal would be necessary where a well-informed and fair-minded observer would consider that there was a real possibility of bias: *Porter v Magill* [2002] 2 A.C. 357. Consideration of the operation of that principle is to be found in *Helow v Secretary of State for the Home Department* 2008 SC (HL) 1. Thus, prior to the commencement of a hearing, a judge should carefully consider whether he, she, or any member of his or her family, has any pecuniary or other material interest in the outcome of the litigation, or whether there may exist some reason, other than such interest, why he or she could not try the case on its objective merits, or reasonably appear to be unable to do so. If so, recusal may be appropriate. If it is concluded that he, she, or a family member, possesses such an interest, but that recusal is not inevitable, that state of affairs should be declared to the interested parties at the earliest opportunity. If, before a hearing has begun, the judge is alerted to some matter which might, depending on the full facts, throw doubt on his or her fitness to sit, the judge should, if practicable, enquire into the full facts, so far as they are then ascertainable, in order to consider the position and, if so advised, recuse himself or herself, or make a disclosure in the light of them. If a judge has embarked upon a

hearing in ignorance of a relevant matter, which emerges during the course of the hearing, he or she should discuss with the parties what has then emerged, at the earliest possible opportunity, so that any problem can be resolved with the minimum of delay, disruption and expense.

- 5.5 In the interests of judicial impartiality, a judge should be circumspect as regards contact with those legal practitioners who are currently appearing, or who may appear regularly, in his or her court. In particular, the judge should not act in such a way as to give rise to a justified perception that he or she might be inclined to favour the submissions of a particular practitioner. However, there will usually be no reason to avoid ordinary social relationships with legal practitioners. Indeed, the maintenance of social relationships between judges, the bar and the solicitors' profession may be conducive to the development of beneficial mutual understanding.
- 5.6 In this whole area, the circumstances and situations which may arise are so varied that great reliance must be placed on the judgment of the individual judge. He or she might usefully confer with a colleague on the matter, where that is possible and appropriate.
- 5.7 Apart from family relationships, personal friendship with, or personal animosity towards, a party to a litigation would also be a compelling reason for disqualification. Friendship may be distinguished from mere acquaintanceship, which may or may not be a sufficient reason for disqualification, depending on the nature and extent of such acquaintanceship. A current or recent business association with a party

would usually mean that a judge should not sit on a case. However, for this purpose, a relevant business association would not normally include that of insurer and insured, bank and customer, or council tax payer and council. Judges should disqualify themselves from any case in which their own solicitor, accountant, doctor, dentist, or other professional adviser is a party to the case. Friendship or professional association with counsel, or a solicitor acting for a party, is not generally to be regarded as a sufficient reason for disqualification. The fact that a family member 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. In such a situation, it is a matter of considering all the circumstances, including the extent of the involvement in the case of the person in question. Past professional association with a party as a client need not of itself be a reason for disqualification, but the judge must assess whether the particular circumstances could create an appearance of bias. Where it comes to the notice of a judge, in advance of a hearing involving evidence, that 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. A judge should not normally sit on a case in which a member of the judge's family appears as advocate.

- 5.8 Judges should, however, be careful to avoid giving encouragement to attempts by a party to use procedure for disqualification illegitimately. If the mere making of an insubstantial objection were sufficient to lead a judge to decline to hear a case, parties would be encouraged to attempt

to influence the composition of the Bench, or Tribunal, or to cause needless delay and expense; in addition, the burden on colleagues would be increased. As a general rule, a previous finding or previous findings by a judge against a party, will rarely, of themselves, provide a ground for disqualification. The possibility that a judge's comments in an earlier case, particularly if offered gratuitously, might reasonably be perceived as personal animosity cannot be excluded, but that possibility is likely to occur only very rarely.

- 5.9 If circumstances which may give rise to a suggestion of bias, or appearance of bias, are present and they are to be disclosed to the parties, that should be done ideally well before the hearing. The judge should bear in mind the difficult position in which parties, and their advisers, are placed by disclosure on the day of the hearing, when making a decision as to whether to proceed. 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 parties as to what procedure to follow should normally be in open court, unless the case itself is to be heard in chambers. The consent of the parties is a relevant and important factor, but the judge should avoid putting them in a position in which it might appear that their consent is sought to cure a substantial ground for disqualification. Even where the parties consent to the judge sitting, if the judge, on balance, considers that recusal is the proper course, the judge should so act. 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. Furthermore, it should 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.

- 5.10 So far as a part-time judge is concerned, he or she should be alert to the possibility that outside activities may create a perception of bias when dealing with particular cases. Careful judgment is required in this respect. The part-time judge may, by virtue of professional practice, have links with professional firms or other parties which might make it inappropriate to hear a case. It may be that the risk of a need for recusal arising may be greater in certain locations than in others.

## 6. THE PRINCIPLE OF INTEGRITY

- 6.1 In general, 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 clear public interest in judges participating, in so far as their office permits, in the life and affairs of the community. 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. Judges however require 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. Thus judges should avoid situations which might reasonably be expected to lower respect for their judicial office. They should 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. An example of this would be a significant failure on the part of a judge to observe the requirements of the law.
- 6.2 With a view to maintaining the respect which should be paid to the holder of any judicial office by the public, judges should at all times be honest in all their dealings. They should ensure that, while publicly exercising their office, they conduct themselves in a manner consistent with the authority and standing of a judge. Since it is necessary for the

proper performance of the duties of a judge to maintain, at least, a reasonable working relationship with those who appear in his or her court, they should refrain from conduct which would undermine that relationship. The dignity of the court should at all times be maintained. Thus discourtesy, or overbearing conduct, towards those appearing in court as counsel, or witnesses, is to be avoided. The judge should seek to be courteous, patient, tolerant and punctual and should respect the dignity of all. He or she should try to ensure that no one in court is exposed to any display of bias or prejudice. All that said, judges are well entitled, and perhaps obliged, to make known their displeasure if satisfied that those appearing before them, in whatever capacity, are failing in their duties or obligations to the court or tribunal.

## 7. THE PRINCIPLE OF PROPRIETY

- 7.1 A judge should avoid impropriety and the appearance of impropriety in all of that judge's activities. As a subject of constant public scrutiny, a judge should accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. As already stated, a judge should conduct himself or herself in a way that is consistent with the dignity of judicial office. In his or her personal relations with individual members of the legal profession who practice regularly in the judge's court, the judge should avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality. A judge holding a full-time appointment should not allow the use of his residence by a member of the legal profession to receive clients, or other members of the legal profession, for business purposes. A judge should not use or lend the prestige of the judicial office which he or she holds to advance his or her own private interests, the interests of a member of the judge's family, or of anyone else. 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 possibly amount to an inappropriate use of judicial prestige and might be seen by donors as creating a sense of obligation. A judge should not knowingly 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. Confidential information acquired by a judge in his or her judicial capacity should not be used or disclosed by the judge for any purpose unrelated to the judge's judicial duties. A judge holding a full-

time appointment should not practise law whilst the holder of judicial office.

- 7.2 It is considered appropriate that a judge may write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice and related matters. However, to obviate the perception that judicial office is being exploited for personal gain, a judge holding a full-time appointment should not generally receive any remuneration for such activities, with the traditional exception of fees and royalties as an author or editor, although the acceptance of a modest gift in recognition of a service given would be unexceptionable. Where a judge is offered a substantial fee for the activities described, such fee should go directly to charity. There is, of course, no objection to a judge accepting reasonable reimbursement of the cost of any necessary travel or accommodation required in attending lectures, seminars, etc. In the event of a judge engaging in literary, or other creative or artistic activities, there can be no objection to that judge receiving the normal royalties, fees, or other payments in respect of the results of those activities.

## 8. THE PRINCIPLE OF EQUALITY

- 8.1 A judge on taking up office is required to take the judicial oath declaring that they will “do right to all manner of people, according to the laws and usages of this realm, without fear or favour affection or ill will”. The judicial commitment to equality before the law is matched by an equal commitment by the Scottish Court Service for its staff and for those who use its services<sup>2,3</sup>
- 8.2 A judge should be aware of, and understand, diversity in society and differences arising from various sources, including, but not limited to, race, colour, gender, religion, national origin, caste, disability, age, marital status, sexual orientation, social or economic status and other like matters. The judge should not, by words or conduct, manifest any bias or prejudice towards any person or group on such grounds. The judge should carry out judicial duties without any differentiation on such grounds. The judge should also require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on such grounds, except such as may be legally relevant to any issue arising in the proceedings, or which may be the subject of legitimate advocacy.
- 8.3 A judge should be aware of his/her responsibilities under equality legislation, including the Equality Act 2010. At all times when exercising their judicial functions, a judge should treat litigants, witnesses, legal

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<sup>2</sup> [http://www.scotcourts.gov.uk/docs/default-source/reports/data/equality\\_statement\\_outcomes\\_and\\_guidance.pdf?sfvrsn=2](http://www.scotcourts.gov.uk/docs/default-source/reports/data/equality_statement_outcomes_and_guidance.pdf?sfvrsn=2)

<sup>3</sup> Inserted at Judicial Council meeting 24 May 2013

representatives, court staff, judicial colleagues and any other persons with whom they come into contact, equally and with the same attention subject to any reasonable adjustments required. In addition all persons should be treated with courtesy, consideration and respect, regardless of age, disability, gender reassignment, marital or civil partnership status, pregnancy or maternity, race, religion, sex and/or sexual orientation. Where a person raises a concern about discrimination, a judge will not treat that person any differently on that account.<sup>4</sup>

8.4 A judge will apply the same principle of equality and fairness of treatment when discharging any administrative, judicial leadership or judicial management function in connection with their judicial office.<sup>5</sup>

8.5 A judge will be aware that in certain circumstances reasonable adjustments may need to be made for a person with a disability, in order to reduce or eliminate any substantial disadvantage on account of his or her disability.<sup>6</sup>

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<sup>4</sup> Inserted at Judicial Council meeting 24 May 2013

<sup>5</sup> Inserted at Judicial Council meeting 24 May 2013

<sup>6</sup> Inserted at Judicial Council meeting 24 May 2013

## 9. THE PRINCIPLE OF COMPETENCE AND DILIGENCE

- 9.1 It is the professional duty of judges to do what they reasonably can to equip themselves to discharge their judicial duties with the high degree of competence that the public expect. This means that judges should take all reasonable steps to maintain and enhance the knowledge and the skills necessary for the proper performance of judicial duties, including availing themselves of the training that may be offered to them. A judge with a full-time appointment should devote his or her professional activity to judicial duties and not engage in conduct incompatible with the diligent discharge of such duties. In particular, all judges, other than lay judges, should seek to maintain and enhance their knowledge of the law and usages which they require to apply. Lay judges are not themselves expected to possess a professional knowledge of the law, since they receive advice on law from other sources. However, they have an obligation to avail themselves of the training that may be offered to them in other areas of their responsibilities.
- 9.2 It is recognised that, in the context of adversarial procedure, as operated in the Scottish courts, a judge is entitled to rely heavily for the ascertainment of the law upon the submissions made to the court by those who appear. However, if experience in a particular case demonstrates that such reliance is misplaced, the judge should act by drawing to the attention of those involved in the case that he or she considers that the court has not been furnished with an adequate exposition of the law to be applied. If such a course is necessary, it should be followed by according to those involved an adequate

opportunity to remedy the shortcomings in submissions which the judge has perceived.

- 9.3 While it is recognised that judges have a legitimate part to play in the development of the law, their constitutional duty is to apply the law as it is, however unsatisfactory it may be. Nevertheless, if a judge considers that the state of the law is unsatisfactory, he or she is quite entitled to draw attention to that fact publicly, or refer the matter concerned to the Scottish Law Commission, or other appropriate authority.
- 9.4 Since the public have certain legitimate expectations as to the decision making of the court, it is important that these should be met. Written decisions should be formulated in such a way as to render them comprehensible to the public, so far as that is consistent with the handling of what may be very complex legal and factual issues. Judges should carefully consider whether they have a sound basis for making critical observations in their judgments. They should do so only if they consider that the public interest requires it to be done in a judgment, as opposed to in some other way.
- 9.5 In addition, it is expected that there should not be any undue delay in the issue of judicial decisions. The time reasonably required to formulate a decision is plainly dependent on the nature, number and complexity of the issues with which the judge has to deal; and on the workload imposed upon him or her in relation to other cases. Accordingly, no absolute time limit can be specified. However, if the presiding judge in the court in which a judge sits has prescribed a period

within which decisions ought to be issued, that requirement should, so far as possible, be respected. If for any good reason, it cannot be, in a particular case, the circumstances should be explained to the judicial administration, with a view to the communication of them to the litigants involved.