



SENIOR TRAFFIC COMMISSIONER

Administrative Policy Guidance

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SENIOR TRAFFIC COMMISSIONER'S GUIDANCE ON TRAFFIC COMMISSIONERS' CONDUCT

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Beverley Bell

Beverley Bell
Senior Traffic Commissioner

1. Foreword

- 1.1 We are justifiably proud of the existing standards of Traffic Commissioner (hereafter referred to as “TC”) conduct and that this has been achieved without the benefit of written guidance. However, in recent years written judicial conduct guidance has been developed in many other jurisdictions and 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](#). Against this background, it is considered that it is now appropriate for such guidance to be available for TCs. This Guide has therefore been devised by the TCs themselves and it is intended that, from time to time, it should be reviewed in the light of experience and changing circumstances.
- 1.2 This Guide is therefore substantially based on the current [Guide to Judicial Conduct](#) issued in England and Wales in March 2013 and the [Statement of Principles for Judicial Ethics for the Scottish Judiciary](#), revised in May 2013. Both documents adopt the “Bangalore Principles” and it is therefore right that these principles are also at the heart of this document.
- 1.3 The range of restraints that are inherent in the acceptance of TC office together with the obligations placed on those acting in a judicial and wider regulatory capacity have been taken into account. However, the responsibilities and the public’s perception of the standards to which TCs should adhere are continuously evolving.
- 1.4 This Guide is intended to offer assistance to TCs on issues rather than to prescribe a detailed code and to set up principles from which TCs can make their own decisions and so maintain their judicial independence. It will prove to be a valuable tool in assisting TCs when dealing with difficult ethical problems with which they will be inevitably faced. TCs must read the Guide in conjunction with their terms and conditions of appointment.

2. Acknowledgements

- 2.1 As stated above this Guide is heavily based on the Judicial Conduct Guide and the Statement of Principles for Judicial Ethics for the Scottish Judiciary.
- 2.2 The Guide has been adapted to reflect the nature and extent of the role of TCs.

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3. Guide to Traffic Commissioner Conduct

3.1 Introduction

- 3.1.1 Having posed the question whether judicial ethics exist as such, Mr Justice Thomas stated: “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 judgment. 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.” TCs have adopted those comments in this document.
- 3.1.2 On a wider stage, what have become known as the *Bangalore Principles of Judicial Conduct* were initiated in 2001. The *Bangalore* principles arose from a United Nations initiative. A draft code of judicial conduct was prepared and a final draft was endorsed at the 59th session of the United Nations Human Rights Commission at Geneva in April 2003.
- 3.1.3 The principles are succinctly stated as 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 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:
- (i) Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair hearing. 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, is essential to the performance of all of the activities of judicial office.
 - (v) Ensuring equality of treatment to all before the hearing room is essential to the due performance of the judicial office.
 - (vi) Competence and diligence are prerequisites to the due performance of judicial office.
- 3.1.4 In the *Bangalore* guidance, those principles are developed in a series of propositions set out in paragraphs under each of the above headings. In drafting the present guidance, weight has been given and acknowledgement is due to that statement of principles. TCs have adopted The Bangalore guidance.
- 3.1.5 Several preliminary points need to be made.
- 3.1.6 The guidance must in all respects be read against the background of the terms of appointment accepted by the TC when assuming office. The primary responsibility for deciding whether a particular activity or course of conduct is appropriate rests with the individual TC 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.

- 3.1.7 Any attempt to set out principles under the *Bangalore* headings leads very quickly to a recognition that the concept of judicial independence is another aspect of judicial integrity and judicial impartiality and that there is a substantial overlap between the principles relevant to the application of the values.
- 3.1.8 The pattern which follows is that sections 4 to 8 consider the general principles stated in paragraph 3.1.3 above with some discussions as to their effect. Principle (vi) is dealt with briefly, for reasons given in section 8. Principle (v) is fundamental and, given the guidance in other sections, is not thought to require elaboration. Sections 9 to 11 provide guidance on specific topics.

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4. Judicial Independence

- 4.1 Judicial independence is sometimes mistakenly perceived as a privilege exercised by TCs, whereas it is in fact a cornerstone of our system of government in a democratic society and like any other Tribunal it is a safeguard of the freedom and rights of the citizen under the rule of law. The TCs, 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 TCs and the other arms should be one of mutual respect, each recognising the proper role of the others. TCs should always take care that their conduct, official or private, does not undermine their institutional or individual independence, or the public appearance of independence.
- 4.2 Whilst TCs have not historically taken the judicial oath on appointment they have always followed the principles of that oath and thereby acknowledged that they are primarily accountable to the law which they must administer.
- 4.3 TCs must be alert to, and wary of, subtle and sometimes not so subtle attempts to influence them or to curry favour. Moreover, in the proper discharge of duties, the TC must be immune to the effects of publicity, whether favourable or unfavourable. That does not mean being immune to an awareness of the profound effect TCs' decisions may have, not only on the lives of people appearing before them, but sometimes upon issues of great concern to the public, concerns which may be expressed in the media.
- 4.4 Consultation with colleagues when points of difficulty arise is important in the maintenance of standards. In performing TCs' duties, however, the TC shall be independent and solely responsible for his or her decisions.

5. Impartiality

- 5.1 A TC should strive to ensure that his or her conduct, both in hearings and in relation to decisions ancillary to a hearing, maintains and enhances the confidence of the operators, Driver and Vehicle Standards Agency (DVSA) and other regulatory bodies, statutory representors and objectors, the legal profession, other stakeholders and the wider public, in the impartiality of the TC as a Tribunal.
- 5.2 Because the TC's primary task and responsibility is to discharge the duties of office, it follows that a TC should, so far as is reasonable, avoid extra-judicial activities that are likely to cause the TC to have to refrain from sitting on a case because of a reasonable apprehension of bias or because of a conflict of interest that would arise from the activity.
- 5.3 TCs disclose upon appointment if they are a member of any political party and this is updated if there is any change. TCs also maintain a register of interests. TCs should ensure that any activity does not compromise the integrity of their appointment.
- 5.4 Another application of the principle, though one difficult to define and apply in specific situations, is the expression of views out of public inquiry that would give rise to issues of perceived bias or pre-judgement in cases that later come before the TC. This issue is considered in more detail in section 10.2.
- 5.5 The question whether an appearance of bias or possible conflict of interest is sufficient to disqualify a TC from hearing a case is the subject of widespread jurisprudence which will guide TCs in specific situations and any attempt to summarise, or comment in detail, would be unhelpful and inappropriate. Recent English cases include *Locobail (UK) Ltd v Bayfield Properties Ltd* [2002] QB 451, *R v Bow Street Magistrates ex parte Pinochet (No.2)* [2002] 1 AC 119, *Re Medicaments and Related Classes of Goods (No.2)*[2001] 1 WLR 700, *M v Islington LBC* [2002] 1 FLR 95 and *Lawal v Northern Spirit Ltd* [2003] UKHL 35 and more particularly the case of *Al-Le Logistics and others v TC for SEMTA, VOSA and TC for NWT A CO/7007/2009* [ALLL].

"In my judgment, the mere fact that the Tribunal has previously decided the issue is not of itself sufficient to justify a conclusion of apparent bias. Something more is required. Judges are assumed to be trustworthy and will understand that they should approach every case with an open mind.....The vice which the law must guard against is that the Tribunal may approach the rehearing with a closed mind. If a judge has considered an issue carefully before reaching a decision on the first occasion, it cannot simply be said that he has a closed mind if, the evidence and arguments being the same as before, he does not give as careful a consideration on the second occasion as on the first. He will, however, be expected to give such reconsideration of the matter as is reasonably necessary for him to be satisfied that his first decision was correct".

Lord Justice Dyson at paragraph 20 Court of Appeal in *AMEC Capital Projects Ltd v. Whitefriars City Estates Ltd* [2004] EWCA Civ 1418 cited as directly relevant to TCs in ALLL

- 5.6 Circumstances will vary infinitely and guidelines can do no more than seek to assist the TC in the judgement to be made, which involves, by virtue of the authorities, considering the

perception that the fair-minded and informed observer would have. While the purpose of the guidance is to express general principles, it has been thought appropriate to provide some detail upon issues that are known or believed in practice to cause problems for TCs, such as those listed under the heading 'personal relations and perceived bias' in section 9 below.

- 5.7 Issues specific to Deputy Traffic Commissioners (DTCs) are considered in paragraphs 5.15.1 to 5.15.4 below.
- 5.8 If a TC, or to the knowledge of the TC, a member of the TC's family (family as defined below in the Bangalore principles) has any significant financial interest in the outcome of the case that will plainly disqualify the TC. It is anticipated that the circumstances in which this is likely to happen will be extremely limited as TCs are required to disclose details of any entity in which they have a significant financial interest upon appointment and on an ongoing basis.
- 5.9 Such a financial restraint may arise without the TC having any direct financial interest in the case to be tried if the case is to decide a point of law which may affect the TC in his or her personal capacity. In taking the decision whether to hear the case, the TC should have regard, in relation to the point of law, to the nature and extent of his or her interest, and the effect of the decision on others with whom he or she has a relationship, actual or foreseeable. (As to the TC's position as a taxpayer see Section 14 of the Supreme Court Act 1981).
- 5.10 If a TC 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, possible recusal of the TC may have to be addressed, whether or not the matter is raised by the parties involved with the case. The risk will arise if a TC has taken part publicly in a controversial or political discussion. It will seldom, if ever, arise from what a TC has said in other cases.
- 5.11 TCs should, however, be careful to avoid giving encouragement to attempts by a party to use procedures for disqualification illegitimately. If the mere making of an insubstantial objection were sufficient to lead a TC to decline to hear a case, parties would be encouraged to attempt to influence who is to be the presiding commissioner or to cause delay and the burden on fellow commissioners would increase. A previous finding or previous findings on credibility will rarely provide a ground for disqualification. The possibility that the TC's comments in an earlier case, particularly if offered gratuitously, might reasonably be perceived as personal animosity, cannot be excluded but the possibility should occur, and is likely to occur, only very rarely.
- 5.12 If circumstances which may give rise to a suggestion of bias, or appearance of bias, are present so that they are to be disclosed to the parties, that should wherever possible be done well before the hearing. Case management procedures will often enable this to be achieved. Disclosure, 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 many public inquiries will be such that advance notification may not be possible and disclosure only on the day of the hearing will be appropriate and sometimes inevitable. The TC should consider the difficult position in which parties, and their advisers, are placed by disclosure on the day of hearing, when making a decision whether to proceed.

- 5.13 Disclosure should of course be to all relevant persons and, save when the issue has been resolved by correspondence before the hearing, discussion between the TC and the parties as to what procedure to follow should normally be in open hearing, unless the case itself is to be heard in private. The consent of the parties is a relevant and important factor but the TC should avoid putting them in a position in which it might appear that their consent is sought to cure a ground of disqualification. Even where the parties consent to the TC sitting, if the TC, on balance, considers that recusal is the proper course, the TC should so act. Conversely, there are likely to be cases in which the TC 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.
- 5.14 A TC is entitled to keep in mind his or her general duty to hear 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 recusal.

5.15 Deputy Traffic Commissioners

- 5.15.1 As their terms of appointment provide, DTCs are expected to refrain from any activity, political or otherwise, which could conflict with their judicial office or be seen to compromise their impartiality.
- 5.15.2 A DTC has the same general obligation to maintain the status and dignity of the office of TC and to be alert to the possibility that outside activities, including political activities may create a perception of bias when dealing with particular cases. Judgement is required in striking a balance between maintaining that status and dignity and the reasonable requirements of a legal practice or the reasonable requirements of other employment and activities.
- 5.15.3 The DTC has additional factors to consider when making a decision as to recusal. The ban on party political activity does not apply to a DTC and therefore the DTC must consider whether the nature and extent of any political activity would create a perception of unfairness in the particular case. The DTC may also, by virtue of professional practice, have links with chambers, professional firms and other parties which make it inappropriate for him or her to hear a case involving them or their clients.
- 5.15.4 The link need not be that of lawyer and client. A solicitor or counsel DTC, for example, may consider it inappropriate to sit in judgement in cases involving a firm or chambers in professional competition.

6. Integrity

- 6.1 As a general proposition, TCs are entitled to exercise the rights and freedoms available to all citizens. Appointment to office brings with it limitations on the private and public conduct of a TC. There is, however, a public interest in TCs participating, insofar 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 TC's personal and family life. TCs 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. TCs should avoid situations which might reasonably lower respect for their judicial office or might cast doubt upon their impartiality as a TC. They must also avoid situations which might expose them to charges of hypocrisy by reason of conduct in their private life. Behaviour which might be regarded as merely unfortunate if engaged in by someone who is not a TC, might be seen as unacceptable if engaged in by a person who is a TC and who, by reason of that office, has to pass judgement on the behaviour of others.
- 6.2 A TC's conduct in hearings and in relation to decisions ancillary to a hearing, should uphold the status of judicial office, the commitment made in his or her appointment and the confidence of parties and witnesses in particular and the public in general. The TC should seek to be courteous, patient, tolerant and punctual and should respect the dignity of all. The TC should ensure that no one in the hearing is exposed to any display of bias or prejudice on grounds said in the *Bangalore* principle entitled "equality" to include but 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". There should be no bias or prejudice on those grounds, which are described in the principles as "irrelevant grounds". 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 Equal Treatment Bench Book. The duty of course remains on the TC to apply the law as it relates to allegedly discriminatory conduct.
- 6.3 The principles of exercising equality and fairness of treatment have always been fundamental to the role and conduct of the TCs when carrying out their judicial functions. As all TCs will recognise, these principles should also be reflected in conduct outside the hearing room.

However, in order to comply with Section 109 of the Equality Act 2010, it is appropriate to issue written guidance on equality and diversity:

- A *Dignity at Work* statement setting out the standards of conduct expected of TCs in their dealings with one another and with members of staff.
 - A *Brief Guide to the Equality Act 2010* outlining the major provisions within the Act as they may affect TCs.
- 6.4 Both documents can be found at Appendix B. Together with this covering statement, these two documents set out the policy to be followed on equality and diversity. This policy applies to all TCs in Great Britain including full time and deputy TCs and all have an individual responsibility to abide by it.

- 6.5 TCs will at all times when discharging any duties in connection with their functions, treat everyone equally¹. In particular:
- TCs involved in the training, mentoring, appraisal, deployment and/or pastoral care of full time or deputy colleagues will act so as to promote equality of opportunity and treatment for all those in respect of whom they have responsibility;
 - TCs will treat all members of the staff within the Office of the Traffic Commissioner (OTC) and other individuals with whom they come into contact in the course of performing their duties with courtesy and with due respect for their personal dignity.
- 6.6 Where a person raises a concern about discrimination in the above context, TCs will not treat that person any differently on that account.
- 6.7 Failure or alleged failure to comply with the terms of this policy may be dealt with, as appropriate, pursuant to the relevant procedures outlined in the [STC's Administrative Policy Guidance Document on Traffic Commissioner's Conduct](#).

¹ Save insofar as required by statute to act otherwise

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7. Propriety

- 7.1 As a general statement of the conduct to be expected of a TC, the section of the *Bangalore* principles on propriety is admirable and appropriate to be adopted as guidance to TCs. Some of the guidance is so obvious that inclusion may appear unnecessary, but the statement is a useful and general reminder and will assist TCs in applying the principles stated in this guide.
- 7.2 Furthermore the Traffic Commissioners for Great Britain recognise that as individual public bodies they are each open to scrutiny under sections 1, 2 and 6 of the Bribery Act 2010. TCs already have strict policies in place in relation to gifts and hospitality and expense claims are open to audit. TCs have limited direct involvement in procurement and must therefore rely on the DVSA to update their procurement documentation and contracts in light of the Act. TCs are committed to reporting any suspicious activity in the private sector which comes to their attention in the course of their work. TCs have a copy of the Ministry of Justice guidance to the Act placed in their bench books.
- 7.3 The general principles of propriety are set out below.
- (1) A TC shall avoid impropriety and the appearance of impropriety in all of the TC's activities.
 - (2) As a subject of constant public scrutiny, a TC must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a TC should conduct himself or herself in a way that is consistent with the dignity of the judicial office.
 - (3) A TC should in his or her personal relations with individual members of the legal profession who practise regularly in the TC's hearing room, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.
 - (4) A TC should not participate in the determination of a case in which any member of the TC's family represents a litigant or is associated in any manner with the case.
 - (5) A TC, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a TC should 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 TC.
 - (6) A TC should inform himself or herself about the TC's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the TC's family.
 - (7) A TC shall not allow his or her family, social or other relationships improperly to influence the TC's judicial conduct and judgement as a TC.
 - (8) A TC should not use or lend the prestige of the judicial office to advance the private interests of the TC, a member of the TC's family or of anyone else, nor shall a TC convey or permit others to convey the impression that anyone is in a special position improperly to influence the TC in the performance of judicial duties.
 - (9) Confidential information acquired by a TC should not be used or disclosed by the TC for any other purpose not related to the TC's duties.
 - (10) Subject to the proper performance of judicial duties, a TC may:
 - (10.1) Write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters.
 - (10.2) 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;
 - (10.3) 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 of a TC;

- (10.4) 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;
- (10.5) Take part time judicial appointments.
- (11) A TC shall not practise law whilst the holder of judicial office. (This paragraph does not apply to deputy TCs.)
- (12) A TC may form or join associations of judicial office holders or participate in other organisations representing the interests of TCs.
- (13) A TC and members of the TC'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 TC in connection with the performance of judicial duties.
- (14) Subject to law and to any legal requirements of public disclosure, a TC 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 TC in the performance of judicial duties or otherwise give rise to an appearance of partiality.
- (15) All TCs shall maintain an up to date register of gifts and hospitality.

7.4 "TC's family" is defined as:

"a TC's mother, father, step mother, step father, mother in law, father in law, brother, sister, brother in law, sister in law, spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the TC and who lives in the TC's household." And

"TC's spouse" includes:

"a domestic partner of the TC or any other person of either sex in a close personal relationship with the TC."

8. Competence and Diligence

- 8.1 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.”

- 8.2 In adopting this principle TCs note that this plainly requires the TC to take reasonable steps to maintain and enhance the TC’s knowledge and skills necessary for the proper performance of judicial duties, to devote the TC’s professional activity to judicial duties and not to engage in conduct incompatible with the diligent discharge of such duties. For solicitor and counsel TCs this will include ensuring meeting the continuing professional development requirements attached to their level of membership of their respective regulatory bodies.
- 8.3 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 judgements and what is required of a TC by way of attendance at judicial seminars. TCs can benefit from and have regard to guidance from the Judicial College.

9. Personal Relationships and Perceived Bias

- 9.1 Personal relationships and perceived bias is an area in which the situations which may arise are so varied that great reliance must be placed on the judgement of the TC, applying the law, his or her judicial instincts and conferring with a colleague where possible and appropriate. The judgement of the Court of Appeal in *Locabail (U.K) Ltd v Bayfield Properties Ltd* (mentioned in paragraph 5.5 above) provides authoritative guidance (see particularly paragraph 25 of the appeal decision). Relevant relationships may exist with parties, legal advisers or representatives of parties, and witnesses.
- 9.2 There are few hard and fast rules. Signposts for guidance, in some of the situations which may arise, are provided in this section and in section 10:
- 9.2.1 A TC should not sit on a case in which the TC has a close family relationship with a party or the spouse or domestic partner of a party.
- 9.2.2 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.
- 9.2.3 A current or recent business or other similar association with a party will usually mean that a TC should not sit on a case. A business association would not normally include that of insurer or insured, banker and customer or council taxpayer and council. TCs should also disqualify themselves from a case in which their solicitor, accountant, doctor, dentist or other professional adviser is a party in the case.
- 9.2.4 Friendship or past professional association with counsel or solicitor acting for a party is not generally to be regarded as a sufficient reason for disqualification.
- 9.2.5 The fact that a relative of the TC is a partner in, or employee of, a firm of solicitors engaged in a case before the TC 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.
- 9.2.6 Past professional association with a party as a client need not of itself be a reason for disqualification but the TC must assess whether the particular circumstances could create an appearance of bias.
- 9.2.7 Where a witness (including an expert witness) is personally well known to the TC all the circumstances should be considered including whether the credibility of the witness is in issue, the nature of the issue is to be decided and the closeness of the friendship.
- 9.2.8 A TC should not sit on a case in which a member of the TC's family (as defined in the *Bangalore* principles) appears as advocate.

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10. Activities outside the Hearing Room

10.1 The Media

10.1.1 TCs should exercise their freedom to talk to the media, with 'the greatest circumspection'. Lord Bingham has commented that 'a habit of reticence makes for good judges.' In adopting this principle a TC should refrain from answering public criticism of a judgement or decision, whether from the bench or otherwise. TCs 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". TCs adopt this.

10.1.2 Guidance as to how to react when a TC is factually misrepresented or where the TC is aware, that remarks could be misinterpreted by reporters, is contained in the document *Media Guidance for the Judiciary* published by the Lord Chief Justice of England and Wales and the Senior President of Tribunals in March 2012. TCs should follow this guidance.

10.2 Participation in Public Debate

10.2.1 Subject to the above, however, many aspects of operator licensing and of the functioning of the TCs are the subject of necessary and legitimate public consideration and debate in the media, especially specialist transport media, and also, but to a lesser degree, legal literature and at public meetings, seminars and lectures, and appropriate contribution by TCs to this consideration and debate can be desirable. It may contribute to the public understanding of the administration of justice and to public confidence in the TCs. 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 work of the TC, the independence of the TC or aspects of the administration of justice.

10.2.2 Care should, however, be taken about the place at which, and the occasion on which, a TC speaks so as not to cause the public to adversely associate the TC 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 trade associations, sets of chambers or firms of solicitors), group, or cause involved, or to a lack of even handedness.

10.2.3 Moreover, it should be borne in mind that the dialogue may not take the form, and the TC cannot expect to assume the role, that the TC would consider appropriate in proceedings. The TC cannot expect to join in and leave the debate on the TC's terms. The risk of different TCs expressing conflicting views in debate must also be borne in mind in that a public conflict between TCs, expressed out of hearings, may bring the TCs into disrepute and diminish the authority of operator licensing.

10.2.4 There are plainly risks in a TC, who may have to deal with a wide range of people in his or her jurisdiction, being exposed to public debate in such a way that the authority and status of the judicial office may be undermined. Consultation with colleagues will almost always be desirable. The risks of expressing views that will give rise to issues of bias or pre-judgement in cases that later come before the TC must also be considered.

10.2.5 Participation in public protests and demonstrations may involve substantial risks of the kind already considered and may be inconsistent with the dignity of judicial office. Consideration will be carried out by individual TCs on a case by case basis.

10.3 Commercial Activities

- 10.3.1 The requirements of office clearly place severe restraints upon the permissible scope of a TC's involvement with commercial enterprises. Guidance appears in case law as to the extent to which a TC is entitled to pursue commercial activities and further detailed guidance, save by reference to the cases, is inappropriate in this document. Reference to the TC's terms of service is appropriate.
- 10.3.2 The management of family assets and the estates of deceased close family members, whether as executor or trustee, is unobjectionable, and may be acceptable for other relatives or friends if the administration is not complex, time consuming or contentious. However, the risks, including the risk of litigation, associated with the office of trustee, even of a family trust, should not be overlooked and the factors involved need to be weighed carefully before office is accepted.

10.4 Involvement in Community Organisations

- 10.4.1 Prior to their appointment, many TCs have been actively involved in community organisations, particularly, but not exclusively, educational, charitable and religious organisations. Continuing such involvement is not necessarily inappropriate 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 TC's performance of his or her duties and the TC's role should not involve active business management.
- 10.4.2 TCs 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 TC'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.
- 10.4.3 Some TCs hold or have held office in governing bodies of educational institutions and similar institutions without embarrassment notwithstanding that the management and funding structures of such organisations are complex, and may be 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.

10.5 References

- 10.5.1 There is no objection in principle to a TC giving references for character or professional competence for persons who are well known to the TC. Consideration should be given as to whether the TC 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 TC. Plainly TCs should guard against inappropriate requests.

- 10.5.2 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 TC entering the arena, albeit for a limited purpose, and the pressure such evidence may put on the trial judge or magistrate. Consultation with a fellow TC is advisable before taking a decision to give evidence.

10.6 Remuneration

- 10.6.1 Provisions for the remuneration of TCs are stated in the terms of appointment. Moreover, by virtue of the terms and conditions of their appointment TCs holding full-time appointments are barred from legal practice. In addition to their salary, a full time TC should not receive any remuneration except as is consistent with the conduct expected of TCs in terms of this guide.

10.7 Gifts, Hospitality and Social Activities

- 10.7.1 Gifts and Hospitality** 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 or 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, TCs should be on their guard against any action which could be seen to undermine their impartiality. TCs 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. Where an organisation offers to pay TC expenses for attendance and the offer is accepted the basis of that acceptance shall be carefully documented. All TCs maintain a register of gifts and hospitality in an agreed format.
- 10.7.2 The acceptance of a gift or hospitality of modest value, as a token of appreciation, may be unobjectionable, depending on the circumstances. For example, a TC who makes a speech or participates in some public or private function should feel free to accept a small token of appreciation.
- 10.7.3 By way of further example, the acceptance of invitations to lunches and dinners by legal and other professional and public bodies or officials and trade associations, where attendance can be reasonably seen as the performance of a public or professional duty, carrying no degree of obligation is entirely acceptable.
- 10.7.4 Caution should be exercised when invited to take part in what may be legitimate marketing or promotional activities, for example by barristers' chambers or solicitors' firms, or professional associations, where the object of judicial participation may be perceived to be the impressing of clients or potential clients.
- 10.7.5 It is also axiomatic that TCs must not exploit the status and prestige of judicial office to obtain personal favours or benefits.
- 10.7.6 Where a TC is in doubt as to the propriety of accepting any gift or hospitality he or she should seek the advice of a fellow TC.
- 10.7.7 Contact with the Profession** There is a long-standing tradition of association between bench and the bar and the solicitor professions. This occurs both on formal occasions, such as dinners, and less formal ones. One caveat has already been stated in paragraph 9.4. 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 TC.

There will be cases in which retaining too close a social relationship with a practitioner who regularly has litigation in the TCs' jurisdiction may create a perception of bias but the particular circumstances, which will vary widely, must be addressed.

- 10.7.8 Other Social Activities.** Social activities need to be assessed in the light of the TC's duty to maintain the dignity of the office and not to permit associations which may affect adversely the TC's ability to discharge his or her duties.

10.8 Use of Equipment

- 10.8.1 A TC should not use equipment, including IT equipment, provided by the OTC and/or DVSA for his or her use as a TC, for other purposes which could bring the office of the TC in general into disrepute.

10.9 Reporting Minor Offences

- 10.9.1 TCs have agreed to follow the Guidance issued by the Lord Chief Justice of England and Wales in January 2008. The Guidance appears at Appendix A.

10.10 Social Netowrking

- 10.10.1 Whilst the use of social networking is a matter of personal choice, TCs are reminded of the helpful guidance that is given to the Judiciary on the security aspects of this medium.
- 10.10.2 TCs 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. TCs should try to ensure that information about their personal life and home address is not available online. TCs should also talk to their family members about such social networking systems as Facebook where personal details which carry some risk (such as holiday absences) can unwittingly be put into the public domain.
- 10.10.3 TCs should also be wary of publishing more personal information than is necessary. In particular phone numbers, dates of birth and addresses are key pieces of information for security fraudsters. Other users probably don't need to know such details – if any contacts do need them they should be sent to individuals separately.
- 10.10.4 Posting some information could put TCs' personal safety at risk. For example, home addresses, details of holiday plans and information about family members could be used for criminal purposes. Photographs could enable home addresses or car registration numbers to be identified.
- 10.10.5 TCs are reminded to check their privacy settings and to restrict access to their profile to ensure that their information is kept to a restricted group.
- 10.10.6 TCs are reminded to check the terms and conditions of any sites they sign up to so as to ensure that they are aware of who owns data posted on the site and what the owners of the site can do with that data.
- 10.10.7 Whilst blogging by TCs is not prohibited, TCs should have regard to the guidance to judicial office holders issued on 8 August 2012 (Appendix C). In summary, TCs who blog (or who post comments on other people's blogs) should not identify themselves and act with the greatest circumspection. TCs should avoid expressing opinions which

could damage public confidence in their own impartiality or that of fellow TCs. This guidance also applies to blogs which purport to be anonymous.

This publication was withdrawn on 22 February 2021

11. Complaints

- 11.1 A [Complaints Protocol](#) has been agreed by all TCs. A paper copy may be requested by writing to:

The Office of the Senior Traffic Commissioner
Suite 6
Stone Cross Plane
Stone Cross Lane North
Golborne
Warrington
WA3 2SH

Email address: sstc@otc.gsi.gov.uk

Appendix A Guidance for Judicial Office Holders on Reporting Minor Offences

Reference paragraph 10.9

Letter to all Judiciary

January 2008

To all Judiciary in England and Wales:

Guidance for Judicial Office-holders on Reporting Minor Offences

I am writing to bring to your attention the new guidance governing the requirements to report minor offences²

There is currently a disparity between magistrates and other judicial office holders in the requirement to report minor motoring offences, such as fixed penalty notices for speeding. In short, whilst magistrates are required to report all offences, other members of the judiciary, including Judges of the High Court, Circuit Judges and District Judges are not required to report minor motoring offences, except where there are aggravating circumstances.

Following discussions at the Arden working group, when it considered the new disciplinary system, it was agreed with Lord Falconer that the position of magistrates and other judicial office holders be brought into line. The Judges Council subsequently proposed that the requirements for magistrates be relaxed to bring them into line with other judicial office holders, a proposal that Jack Straw has now agreed to. The new reporting requirements also deal for the first time with disposals such as ASBOs, which are not included in existing arrangements. Whilst it is of course extremely unlikely that some of these requirements will ever arise, the guidance is intended to be exhaustive.

The reporting requirements are now as follows:

- *Road Traffic offences need only be reported if on conviction:
 - *Any period of disqualification from holding or obtaining a driving licence is imposed, or,*
 - *Six penalty points are ordered to be endorsed on the licence, or,*
 - *If a lesser number of points are ordered to be endorsed, the total points then endorsed on the licence exceeds six.**
- *Speed awareness courses, penalty charge notices for parking etc and fixed penalty notices for matters such as littering need not be reported.*
- *Penalty notices for disorder must be reported, given the public element, as must cannabis warnings, given the involvement of drugs.*
- *Anti Social Behaviour Orders must be reported, including those imposed in civil proceedings.*
- *All forms of formal recorded caution (i.e. those given by the police on an admission of guilt of the offence being cautioned) must be reported.*

² Office-holders should note that the exemptions set out in this letter do not apply where there are court proceedings relating to the charge.

- *Judicial office holders should judge out of court disposals and any new penalty alongside this framework in determining whether or not any other matter needs to be reported.*

These guidelines are in line with the advice that the Association of District Judges and Council of Circuit Judges currently give in response to queries from their members.

Please base your decisions on whether to report minor offences on these new guidelines from now on.

Lord Phillips of Worth Masters

Lord Chief Justice of England and Wales

January 2008

This publication was withdrawn on 22 February 2021

Appendix B – Integrity: Guidance on Equality and Diversity

Dignity at work statement

- 2.1 This document sets out the standards of conduct that all full time and deputy TCs are expected to maintain in their dealings with one another and with members of staff.
- 2.2 All full time and deputy TCs are expected to treat their colleagues and members of staff decently and with respect. They are committed to ensuring that the environment in which TCs and staff work is free from harassment, victimisation and bullying and that everyone is able to work in an atmosphere in which they can develop professionally and use their abilities to their full potential.
- 2.3 Allegations of such conduct will be investigated and, if substantiated, appropriate action will be taken to prevent a recurrence.
- 2.4 In accordance with the equality and diversity policy, TCs are expected to treat everyone with the same attention, 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 (known collectively as “protected characteristics”).
- 2.5 Harassment, victimisation and bullying of other means of words and/or behaviour are unacceptable.
- 2.6 Conduct giving rise to harassment, victimisation and/or bullying may take place face to face, or by other means of communication such as a telephone call, letter, text message, email or entry on a social networking site. The conduct may consist of a continuous course of conduct or a one-off incident. It may be directed by one individual against another individual or involve a group or groups of individuals.

Definitions

- 2.7 “Harassment” occurs when one person perpetrates unwanted conduct (including sexual conduct) related to one or more of another person’s protected characteristics which has the purpose or effect of violating that other person’s dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for that other person.
- 2.8 “Victimisation” occurs when one person subjects another person to a detriment because that other person has brought proceedings under the Equality Act 2010, has given evidence or information in connection with any such proceedings, has made an allegation that someone has contravened the Act, or has done any other thing for the purposes of or in connection with the Act.
- 2.9 “Bullying” carries its normal meaning. It consists of conduct that is offensive, intimidating, malicious and/or insulting and which has the purpose or effect of undermining, humiliating, and/or frightening another person. It may amount to a misuse or abuse of power. Unlike harassment and victimisation, the conduct need not be related to one of the “protected characteristics” of the person against whom it is directed.
- 2.10 Any full time or deputy TC who becomes aware of behaviour on the part of any other full time or deputy TC or member of staff which he or she considers to have breached the standards of conduct set out in this Statement should discuss the matter with the Senior Traffic Commissioner.

A brief guide to the Equality Act 2010

- 3.1 Most of the Equality Act 2010 is now in force. The Act not only harmonises and consolidates previous anti-discrimination legislation; it also strengthens legal rights to equality and increases the range of unlawful acts of discrimination outside the employment field. In addition it places a new set of statutory equality duties on public authorities. The equality duty (Section 149) requires public authorities, in the exercise of their public functions, to have due regard to eliminate prohibited discrimination, harassment and victimisation, and advance equality of opportunity and foster good relations between different groups of people.
- 3.2 Whilst the “judicial function” is exempt from the prohibition on discrimination in the exercise of public functions, this exemption is likely to be limited to the core, adjudicative function. Ancillary functions, e.g. training, mentoring, conducting appraisals, managerial or committee functions and conduct towards colleagues or staff will not be exempt.
- 3.3 This guide is an outline of the major provisions within the Act as they may affect TCs and is not intended as a definitive statement of the law. It also includes some examples showing how the Act may impact on the judiciary.

Protected characteristics

- 3.4 The Equality Act identifies nine protected characteristics, or specific grounds of discrimination which it treats as suspect grounds, or suspect classifications, which are intrinsic to an individual’s dignity and autonomy. The protected characteristics are:

- age
- disability
- gender reassignment
- marital or civil partnership status
- pregnancy or maternity
- race
- religion
- sex
- sexual orientation

The Act makes it unlawful, in a variety of ways and contexts, to discriminate against someone by reason of any of these characteristics.

Types of discrimination as defined in the Act

- 3.5 Direct discrimination (s.13) occurs if a person is treated less favourably than another person is or would be treated because of their possession of one of the protected characteristics. In general, direct discrimination cannot be justified.
- 3.6 The form of discrimination also extends to cases where someone is perceived to have the relevant characteristic.
- e.g. A TC of Iraqi origin, unlike her colleagues, is not invited to the cathedral court room service at the start of the legal year “because she is Muslim”. In fact she is not Muslim, but is perceived as such and treated less favourably because of this perception.
- 3.7 Discrimination by association occurs if a person is treated less favourably, not because of a protected characteristic that he or she personally has but because they are linked or associated with someone who has a protected characteristic.

e.g. A carer for a disabled person is passed over for advancement because they are perceived as having responsibilities which will not allow them to concentrate fully on their role.

- 3.8 Indirect discrimination (s.19) occurs if a rule of practice which applies to everyone across the board has the effect of disadvantaging people possessing a particular protected characteristic and the rule or practice cannot be justified as being a proportionate means of achieving a legitimate aim.

e.g. A rule is made that a particular training session will be held between 6 and 8 p.m. Although the rule is applied across all traffic commissioners and deputy traffic commissioners, it places those with caring responsibilities at a particular disadvantage because they need to be home before 8pm. The training organisers would be required to demonstrate that the indirectly discriminatory timing of this particular session was a proportionate means of achieving the legitimate aim of judicial training on this topic.

- 3.9 Special provisions now govern the different forms of disability discrimination. The Equality Act 2010 recognises that more than formal equality is required to enable disabled people to participate as fully as possible in society. In addition to protection from direct and indirect discrimination, reasonable adjustments may be required to assist a disabled person who, because of his or her disability, is placed at a substantial disadvantage in comparison to others without that disability (s.20). These may be, for example, by adaptations or modifications to premises, physical features or different arrangements, such as sitting times.

- 3.10 Making such adjustments may involve the traffic commissioner, deputy traffic commissioner and/or DVSA; and, depending upon the circumstances, this will often require the office-holder and the administration to liaise.

- 3.11 Unlawful discrimination may also occur if a disabled person is treated unfavourably because of something arising in consequence of his or her disability which cannot be shown to be a proportionate means of achieving a legitimate aim (S.15).

e.g. A TC is diagnosed as having a visual impairment and requires adapted IT equipment, but is told that funding is not available for a "non-standard" kit. DVSA may be required to make the necessary adaptations to the equipment for the TC.

- 3.12 Pregnancy and maternity-related discrimination occur if a woman is unfavourably treated because of a current or previous pregnancy, or because she has given birth (ss.17 & 18).

e.g. A TC is told she will not be authorised to sit on particular cases because she is pregnant and will be unable to sit while on maternity leave.

- 3.13 Finally, harassment and victimisation are specific forms of prohibited conduct defined in the Act. Harassment is unwanted conduct related to the protected characteristic of age, disability, gender reassignment, race, religion or belief, sex or sexual orientation, which has the purpose or effect of violating the other person's dignity or creating an unpleasant environment (s.26).

e.g. A member of staff at the OTC is repeatedly praised for their sweet nature and when they complains about being patronised, it does not cease. This is likely to be unlawful harassment.

- 3.14 Victimisation occurs when one person subjects another person to a detriment because that other person has brought proceedings under the Equality Act 2010, has given evidence or information in connection with any such proceedings, has made an allegation that someone has contravened the Act, or has done any other thing for the purposes of or in connection with the Act (s.27).

e.g. A deputy TC supports a fellow deputy TC who makes a complaint of discrimination against a TC. When they make enquiries about applying to sit in a different Traffic Area they are told that their application will probably fail. If this is because of their involvement in the previous case it is likely to constitute unlawful victimisation.

- 3.15 For further, more detailed information, please see the [Equality Act Codes of Practice](#).

This publication was withdrawn on 22 February 2021

Appendix C – Guidance on Blogging by Judicial Office Holders

Introduction

This guidance is issued on behalf of the Senior Presiding Judge and the Senior President of Tribunals. It applies to all courts and tribunal judicial office holders in England and Wales, and is effective immediately.

Definitions

A “blog” (derived from the term “web log”) is a personal journal published on the internet. “Blogging” describes the maintaining of, or adding content to, a blog. Blogs tend to be interactive, allowing visitors to leave comments. They may also contain links to other blogs and websites. For the purpose of this guidance blogging includes publishing material on micro-blogging sites such as Twitter.

Guidance

Judicial office holders should be acutely aware of the need to conduct themselves, both in and out of court, in such a way as to maintain public confidence in the impartiality of the judiciary.

Blogging by members of the judiciary is not prohibited. However, officer holders who blog (or who post comments on other people’s blogs) must not identify themselves as members of the judiciary. They must also avoid expressing opinions which, were it to become known that they hold judicial office, could damage public confidence in their own impartiality or in the judiciary in general.

The above guidance also applies to blogs which purport to be anonymous. This is because it is impossible for somebody who blogs anonymously to guarantee that his or her identity cannot be discovered.

Judicial office holders who maintain blogs must adhere to this guidance and should remove any existing content which conflicts with it forthwith. Failure to do so could ultimately result in disciplinary action.