

Judiciary
of Scotland



Guidance to Judicial Office Holders on Judicial Ethics in Scotland

Revised 2023

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FOREWORD

The Guidance to Judicial Office Holders on Judicial Ethics in Scotland was originally framed in 2010, after consultation, by the Judicial Council for Scotland.

The Guidance provides advice in the light of which judges should make their decisions. It does not provide an answer to every ethical question; nor does it prescribe a code of conduct.

The Guidance will inform the public of the principles by which judicial office holders are guided in their professional and private lives.

The Guidance will be subject to regular review. The text of the Guidance was revised by the Judicial Council in May 2013, May 2015 and 2023.

Lord President
February 2024

1. INTRODUCTION

- 1.1 The Scottish Judiciary has a tradition of high standards of conduct. That was achieved without written guidance. In recent years, written guidance has been developed in many jurisdictions. A recognition of the need for guidance emerged in the development of the *Bangalore Principles of Judicial Conduct* (Geneva, April 2003). It is appropriate for such guidance to be available in Scotland. This document has been devised, after consultation, by the Judicial Council for Scotland. It will be reviewed in the light of experience and changing circumstances.
- 1.2 Ethical standards derive from several sources. First, the terms of the judicial oath 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”. Secondly, there is a public interest in the maintenance of respect for the law and the judges who apply it. Thirdly, Article 6 of the European Convention confers the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Finally, the *Bangalore Principles* provide a common set of standards, which are recognised internationally. This guidance has been formulated in the light of these sources and relevant Scottish factors.
- 1.3 The guidance is not intended to be prescriptive. It may draw attention to areas of particular sensitivity. It is not an answer to every ethical question.

2. THE SCOPE OF APPLICATION OF THIS GUIDANCE TO JUDICIAL OFFICE HOLDERS ON JUDICIAL ETHICS IN SCOTLAND

2.1 The principles set out in this guidance will be of assistance to all judicial office holders. These comprise:

- (a) All judges of the Court of Session and the High Court of Justiciary (including temporary or re-engaged retired judges);
- (b) Sheriffs Principal, sheriffs, summary sheriffs, fee-paid part-time sheriffs and fee-paid part-time summary sheriffs (including temporary sheriffs principal, part-time sheriffs and re-engaged part-time sheriffs and summary sheriffs);
- (c) The Chair, Deputy Chair and members of the Scottish Land Court as well as the members of Lands Tribunal for Scotland;
- (d) Justices of the Peace; and
- (e) Ordinary and Legal Members of the Scottish Tribunals.

Some of the restraints that must be accepted by the holders of salaried judicial appointments cannot reasonably be imposed upon the holders of fee-paid appointments. A distinction has been made accordingly. The guidance is applicable to all judicial office holders, unless it is specifically stated to be limited in application either to salaried or fee-paid judicial office holders.

- 2.2 All judicial office holders are referred to as “judges”. “A judge’s family” includes the judge’s spouse or partner, child (including child by affinity or adoption), and any other person who lives with the judge and with whom the judge has a close personal relationship. It does not include members of the judge’s extended family or friends.
- 2.3 The “Head of the Judiciary” is the Lord President of the Court of Session. Where the guidance refers to an “authorised senior judge”, that means, for Senators of the College of Justice and Sheriffs Principal, the Lord President. For sheriffs, summary sheriffs and Justices of the Peace, it means the Sheriff Principal of the relevant sheriffdom. For tribunal judges, the authorised senior judge will be the Chamber President or other judge having a leadership and guidance role such as the President of Scottish Tribunals.
- 2.4 Justices of the Peace and members of some tribunals have been regarded as free to have party political involvement. This Guidance is not intended to alter that tradition. The guidance in para 4.15 does not apply directly to those persons. However, they should ensure, consistent with para 4.3, that any political involvement does not impinge upon the performance of their judicial functions.

3. THE SIX BANGALORE PRINCIPLES

3.1 The principles are that:

- (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; and
- (6) Competence and diligence are pre-requisites to the due performance of judicial office.

3.2 There is a degree of overlap between these principles, hence there is an element of repetition in the chapters which follow.

4. JUDICIAL INDEPENDENCE

- 4.1 Judicial independence is a cornerstone of any system of government in a democratic society. It acts as 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 state. A distinction exists between constitutional independence, which is the concern of all judges and in particular the Lord President, and individual independence, which every judge has a right and a duty to maintain.
- 4.2 Constitutional independence requires respect from the other arms of state for security of judicial tenure, judicial remuneration and other financial benefits, and immunity from civil liability for judicial acts. These are not privileges, but essential safeguards.
- 4.3 Individual judicial independence requires that any judge shall exercise judicial functions on the basis of the judge's own assessment of the facts of the case, in accordance with a conscientious understanding of the law. No consideration should be taken of extraneous influences, whether inducements, pressures, threats, or other interferences, direct or indirect, from any quarter, and for any reason. A judge should be resistant to the effects of publicity, whether favourable or unfavourable. This does not mean that a judge should be unaware of the profound effect that a judicial decision may have, not only upon the lives of the people before the court, but also upon issues of concern to the public.

- 4.4 The relationship between the judiciary and the other arms of the state should be one of mutual respect; each recognising the proper role of the others. A clear distance should be maintained between the judiciary and the executive, particularly given the latter's role as a regular litigant before the courts and tribunals. Judges should take care that their conduct, official or private, does not undermine their constitutional or individual independence, or the public appearance of that independence. Judges should be staunch defenders of their own independence and should be vigilant to identify and to resist any attack upon that independence, by whomsoever or by whatever means.
- 4.5 In performing judicial duties, a judge must be independent of judicial colleagues and be solely responsible for their own decisions. Nevertheless, consultation with colleagues, when points of difficulty arise, is of great assistance and important in the maintenance of standards. The judge is free to contribute to a collective decision of the court, to dissent from a majority decision and to express their own opinion, as the case may be.
- 4.6 The principle of judicial independence does not restrict a judge from engaging in commercial activities. With the exception of sheriffs principals, sheriffs and summary sheriffs, a salaried judge may engage in business if the judge so chooses. This includes undertaking employment, holding a directorship, or performing another role in which the judge has management responsibility or control of a business. In every case, prior to undertaking such a role, the judge requires to seek permission from their authorised senior judge. In deciding whether it is appropriate for a judge to engage in a commercial activity, the authorised senior judge may wish to consider the following factors:

- The nature of the business and its potential to attract public controversy or criticism;
- The appropriateness of engagement and potential impact on the dignity of judicial office;
- The scope of the business and the resulting demands upon the judge;
- The regulatory requirements to which the judge will be subject and the potential for a breach of an obligation or a failure in that respect to raise issues of fitness for judicial office; and
- Section 15 of the Courts Reform (Scotland) Act 2014, which prohibits sheriff principals, sheriffs and summary sheriffs from engaging, whether directly or indirectly, in **any** business.

4.7 Any activity, which presents a risk to the judge's own reputation and standing, or to the reputation of the judiciary as a whole, is to be avoided. A judge should be mindful that their primary commitment must be to their judicial role. A business commitment, which negatively impacts upon either the time or the focus which a judge can lend to their judicial role, is to be avoided. When engaged in any commercial activity, a judge should not use their judicial title or office for any purpose.

4.8 The exception to the principle expressed in paragraph 4.6 is legal practice. No salaried judge may remain a practising member of the bar, a partner or employee in a law firm, or an employee of a firm dealing with litigation claims as its business. The risk of a conflict of interests or the perception of bias arising is too great in these circumstances.

4.9 These considerations do not apply to fee-paid judges who are free to continue to engage in commercial activities, including legal practice,

subject to any constraints imposed in connection with appearing before particular courts or tribunals in Scotland. A fee-paid judge will wish to consider the factors set out in paragraph 4.6 when giving consideration to undertaking a commercial activity. When a fee-paid judge is engaging in a commercial activity, no reference should be made to their judicial title or office.

- 4.10 Fee-paid part-time sheriffs and part-time summary sheriffs who remain as practising solicitors are in a unique position. They should be aware of the restriction imposed upon them by section 15(3) of the Courts Reform (Scotland) Act 2014 in relation to presiding in a sheriff court district where the judge's business is situated.
- 4.11 A salaried judge may continue to engage in non-commercial activities for charitable, educational, sporting or other bodies. A judge should be aware of the risks attached to organisations whose primary purpose is not for profit. The non-commercial nature of the organisation does not diminish the risks which those involved in such bodies can face. Such organisations are often structured as businesses, employing large numbers of staff, and operating with high turnovers. They may be held to a high moral standard and be highly susceptible to public controversy. The factors set out in paragraph 4.6 should be considered in these circumstances.
- 4.12 If any judge becomes or remains involved in a sporting, charitable or other body, including holding a directorship in such a body, the judge should guard against circumstances arising, which might be seen to cast doubt upon their independence. Use of a judge's judicial title may be undesirable. 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 of that participation 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 where it might be seen to cast doubt on their independence or involve the judge in a matter of controversy.

- 4.13 These distinctions may not always be clear. If in doubt, the judge should seek advice from the Judicial Office.
- 4.14 There is 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 that participation.
- 4.15 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 their right to vote. If, at the time of appointment, a judge is a member of any political party or organisation, such a tie should 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. A judge should do nothing which could give rise to any suggestion of political bias, such as involvement in party political controversy. A judge should not participate in public demonstrations or protests, which, by associating the judge with a political viewpoint or cause, may diminish their 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.

- 4.16 Many aspects of the administration of justice and the functioning of the judiciary are the subject of public consideration and debate. Judicial contribution may be desirable. It may enhance public understanding of the administration of justice and public confidence in the judiciary. Care should be taken to ensure that any contribution remains within proper bounds. 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.
- 4.17 A judge holding a salaried judicial appointment may be asked to accept appointment to a government committee, commission, or other position that is concerned with issues of fact or law. This may include involvement in matters such as the improvement of the law, the legal system, or the administration of justice. A judge may be asked to chair a public inquiry, on a topic which may be non-legal, but highly technical. It is consistent with judicial office for a judge to serve in these capacities, if the reason for the appointment is the need to harness to the task 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. A judge should not accept such an appointment where the purpose is to lend the respectability of the office of a judge, or the reputation of the holder, to a political end. A judge should, before accepting any such appointment, ensure that appropriate safeguards are in place to secure their independence and impartiality. A public inquiry set up under the Inquiries Act 2005 will normally provide such safeguards.
- 4.18 A judge may be asked to contribute to the formulation of government policy, generally by the offer of appointment to a government or

government-sponsored body. Such an offer should be declined. It is not appropriate, standing the separation of powers, for a judge to contribute to government policy-making. It may be appropriate for a judge to contribute, through academic writing, the giving of evidence, or membership of an appropriate body, to the public debate, which precedes the formulation of government policy. It may be appropriate for a judge to comment on government policy, once published, from the standpoint of whether it will work effectively. That will often be done by responses to a consultation. The function of policy-making remains the exclusive province of government.

- 4.19 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. This should be avoided. The expression of a collective judicial viewpoint will normally 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 of a recognised association of judges. Similar considerations apply where an arm of government, or the Scottish Law Commission, seeks views on a proposal by way of responses to a consultation, or where a parliamentary committee asks for written or oral evidence. A response to a consultation, or to a parliamentary committee, should represent the considered collective view of the judiciary as a whole or of a particular judicial branch. Those directly invited to offer a view should contact the Head of the Judiciary, or an authorised senior judge, as may be appropriate, to ensure that this approach is followed.

- 4.20 A decision may attract unfair, inaccurate or ill-informed comment, or criticism. This may reflect upon the competence, integrity or

independence of a judge or the judiciary. In relation to inaccurate media comments, assistance should be sought from the Judicial Communications team. A judge should never comment publicly upon their own judgment once it has been published, even to clarify a supposed ambiguity, except when authorised by statute to do so. Should a public response be appropriate, it should normally come from the Head of the Judiciary or authorised senior judge. This should not be understood as inhibiting appropriate comment, whether critical or otherwise, upon a judgment within the context of an appeal process. In that context, an appeal court judge should exercise courtesy and discretion when commenting upon the opinions of colleagues. Except as noted above, a judge should not criticise another judge in a public forum. Disregarding this approach may undermine the confidence of the public and of the legal profession in the judiciary.

- 4.21 It is inappropriate for a salaried judge to speak at, or participate in, events run for individual law firms or their clients, or other private commercial entities. Lending a judge's name to an event run for a particular commercial entity will breach the principle of impartiality. A salaried judge should not be a member of a specialised law society. No judge should be a member of a campaigning law group. A judge may speak at, or participate in, an event run by a law faculty or other professional body, including the Faculty of Advocates or the Law Society of Scotland. In the event of any uncertainty, a judge should contact the Head of the Judiciary, or an authorised senior judge, as may be appropriate.
- 4.22 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 source. Where the benefit is not

commensurate with an existing family or social relationship between the judge and the donor, or host, it should normally be declined. 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. A judge may accept invitations to give lectures, addresses, or speeches of a non-legal nature at dinners, or other occasions, and to accept commensurate hospitality, tokens of appreciation for their efforts, or appropriate expenses of travel or accommodation (see para 7.3).

5. THE PRINCIPLE OF IMPARTIALITY

- 5.1 A judge should strive to ensure that their conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and the judiciary. A judge's primary responsibility is to discharge the duties of office. A judge should, so far as is reasonable, avoid extra-judicial activities that are likely to cause the judge to refrain from sitting because of a reasonable apprehension of bias, or because of a conflict of interest arising from the activity. Extrajudicial-activities extends to online activities. A judge should be mindful that declining jurisdiction (recusal) for a trivial reason is to be avoided. A recusal should occur only in exceptional circumstances, such as where there exists a clear and obvious reason why a judge should not decide a case on its objective merits or may reasonably appear to be unable to do so.
- 5.2 A family or commercial relationship, or a personal friendship with, or personal animosity towards, a party is a compelling reason for declining to sit. A meaningful acquaintance with a litigant, or a person known to be a significant witness in the case, might constitute a valid reason. A 'meaningful acquaintance' is someone with whom a judge has a close relationship; personal, commercial or otherwise. Recusal is necessary where a well-informed and fair-minded observer would consider that there was a real possibility of bias (*Helow v Secretary of State for the Home Department* 2008 SC (HL) 1). A judge should be particularly aware of how their engagement in a commercial or non-commercial activity or organisation may appear (see para 4.19). If a judge is in doubt about the appropriateness of involvement in any particular extra-judicial activity, a judge should consult their authorised senior judge.

- 5.3 A judge must not adjudicate upon any matter in which the judge, or any members of the judge's family (see para 2.2) has a pecuniary interest. A judge should consider whether any litigation may involve a decision which may affect their personal interests in a different context, or that of a member of their family, or the interests of any business in which a judge may be involved. Circumstances, which may give rise to an appearance of bias, should be disclosed to the parties 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. Disclosure should be to all parties, and, except when the issue has been resolved in advance of the hearing, should normally be in open court. 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 declinature.
- 5.4 The pecuniary interest which a judge, or a member of the judge's family, may possess in the outcome of a particular litigation may be so limited that the litigants would have no objection to the judge. An example is the holding of relatively few shares in a public company, which is involved in litigation. Such an interest may be declared; thus affording litigants the opportunity of objecting. Where litigants have no objection the interest declared can properly be disregarded. There may be exceptional circumstances in which a declared interest, to which litigants do not object, is of such a nature as to justify declining jurisdiction. Such situations should be extremely rare. There will 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 objection. The urgency of a

situation may be such that a hearing is required in the interests of justice, notwithstanding the existence of arguable grounds for declinature.

- 5.5 If a judge or a judge's family member possesses a pecuniary interest, but recusal is not inevitable, that interest should be declared to the parties at the earliest opportunity. If, before a hearing, the judge is alerted to some matter which might, depending on the full facts, throw doubt on the judge's ability 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, to recuse themselves, or to make a disclosure. If a judge has embarked upon a hearing in ignorance of an interest, which emerges during the course of the hearing, the judge should discuss with the parties what has emerged, at the earliest possible opportunity, so that any problem can be resolved with the minimum of delay, disruption and expense.
- 5.6 A current or recent business association with a party usually means that a judge should not sit on a case. A business association does 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. Friendship or professional association with counsel, or a solicitor acting for a party, is not a sufficient reason for declinature. The fact that a family member is a partner in, or an employee of, a firm of solicitors engaged in a case before the judge does not necessarily require disqualification. All the circumstances, including the extent of the involvement of the member in the case should be considered. Past professional association with a party as a client is not of itself a reason for declinature, but the judge must assess whether the particular

circumstances could create an appearance of bias. If 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 sit on a case in which a member of the judge's family (see para 2.2) appears as advocate.

- 5.7 Judges should avoid giving encouragement to attempts by a party to use procedure for illegitimate recusal. If the mere making of an objection were sufficient to lead a judge to decline to hear a case, some parties may be encouraged to attempt to influence the composition of the Bench, or Tribunal, or to cause needless delay and expense. The burden on colleagues would be increased. A previous finding by a judge against a party, will rarely, of itself, provide a ground for declinature. 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 will occur only extremely rarely.
- 5.8 A fee-paid judge should be alert to the possibility that outside activities may create a perception of bias. The fee-paid judge may, by virtue of professional practice, have links with professional firms or other parties which might make it inappropriate to hear a case. The risk of a need for recusal may be greater in certain locations than in others.
- 5.9 A judge should be circumspect as regards to contact with those legal practitioners who are currently appearing, or who may appear regularly, in the judge's court. A judge should not act in such a way as to give rise to a justified perception that they might be inclined to favour the submissions of a particular practitioner. There will usually be no reason to avoid

ordinary social relationships with legal practitioners. The maintenance of social relationships between judges, the bar and the solicitors' profession is conducive to the development of beneficial mutual understanding.

- 5.10 The circumstances and situations which may arise are so varied that great reliance must be placed on the judgement of the individual judge. A judge should confer with a colleague or authorised senior judge on the matter, where that is possible.

6. THE PRINCIPLE OF INTEGRITY

- 6.1 In general, judges are entitled to exercise the rights and freedoms available to everyone else. There is a clear public interest in judges participating in the life and affairs of the community. A balance needs to be struck between the requirements of judicial office and the legitimate demands of the judge's personal and family life. Appointment to judicial office brings with it limitations on the private and public conduct of a judge. Judges require to accept that the nature of their office exposes them to public scrutiny. It puts constraints on their behaviour, which other people may not experience. 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 accusations of hypocrisy because of things which they have done in their private lives. Behaviour which might be regarded as merely unfortunate, if engaged in by someone who is not a judge, might be seen to be unacceptable if engaged in by a judge who has to pass judgement on 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 Judges should, at all times, be honest in their dealings. They should ensure that they conduct themselves in a manner consistent with the authority and standing of a judge. It is necessary for the proper performance of the duties of a judge to maintain a reasonable working relationship with both SCTS staff and those who appear in court. Judges should refrain from conduct which would undermine that relationship. Treating people fairly, with courtesy and respect, goes to the heart of what it means to be a judicial office holder. The dignity of the court should at all times be maintained. Discourtesy, or overbearing conduct, towards those appearing in court as counsel, or witnesses, should be avoided. A judge

should seek to be courteous, patient, tolerant and punctual and should respect the dignity of all. A judge should try to ensure that no one in court is exposed to any display of bias or prejudice. Nevertheless, judges are entitled to make their displeasure known if those appearing before them, in whatever capacity, are failing in their duties or obligations to the court or tribunal.

- 6.3 A judge should be aware that the extra-judicial activities, in which restraint may be necessary, include online behaviour. Judges are strongly advised not to sign up to social media sites such as Facebook or Twitter. If a judge chooses to engage in online communication, extreme caution should be exercised. Online discussions are not private. They may have unintended longevity. Social media is a public forum. The same considerations apply as they do to speaking in public or writing something for publication. Under no circumstances should discussion of judicial matters take place online. A judge should be wary of publishing any personal information online. Any form of social media activity including posting, liking, commenting or sharing information poses a danger. The use of symbols or emojis in online communications, which may have connotations of which a judge is unaware, is to be avoided. 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. This increases the security risks to which the judge is exposed. Judges are directed to the terms of the IT & Information Security Guide for Judicial Office Holders in Scotland issued by the Lord President in February 2012 and last amended in December 2018.¹

¹ Inserted following Judicial Council meeting 24 May 2013

7. THE PRINCIPLE OF PROPRIETY

- 7.1 A judge should avoid impropriety and the appearance of impropriety. A judge must accept personal restrictions that might be viewed as burdensome by others and should do so freely and willingly. A judge should behave in a way that is consistent with the dignity of judicial office. In personal relations with 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 (see para 5.8). A salaried judge 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 judicial office to advance any 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, including those for a charitable organisation (see paras 4.11-12). This could amount to an inappropriate use of judicial prestige. It might be seen by donors as creating an obligation. A judge should not 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.
- 7.2 Confidential information acquired by a judge in a judicial capacity should not be used or disclosed by the judge for any purpose unrelated to the judge's judicial duties.
- 7.3 A judge may write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice and related matters. A judge may accept reasonable fees and royalties for these activities,

provided that they are not performed or prepared in the course of a judge's working day. A judge may accept reimbursement of the cost of any reasonable travel or accommodation required in delivering lectures, seminars, etc. In the event of a judge engaging in literary, or other creative or artistic activities, the judge may receive royalties, fees, or other payments arising from those activities. A judge may state on promotional material that they are a judicial office holder (see para 4.22).

8. THE PRINCIPLE OF EQUALITY

- 8.1 A judge is required to take the judicial oath, declaring that the judge 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 principles of exercising equality and fairness of treatment are fundamental to the role and conduct of a judge. The judicial commitment to equality before the law is matched by an equal commitment by the Scottish Courts and Tribunals Service for its staff and for those who use its services^{2,3}
- 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. A judge should not, by words or conduct, manifest any bias or prejudice towards any person or group on such grounds. A judge should carry out judicial duties without any differentiation on such grounds. The judge should 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. A judge should bear in mind that a lawyer or other court officer performing a role before the court may themselves have characteristics which raise the need for consideration of reasonable adjustment. Practical examples of reasonable adjustments which could be made include providing communication aids, taking regular breaks or providing documents in alternative formats. More information on what is meant by ‘reasonable

² The Scottish Courts and Tribunals Service Equalities Statement: [MEPB 35/10 \(scotcourts.gov.uk\)](https://www.scotcourts.gov.uk/media/35/MEPB_35_10.pdf)

³ Inserted at Judicial Council meeting 24 May 2013

adjustments' can be found in Chapter 11 of the Equal Treatment Bench Book.⁴

- 8.3 A judge should be mindful of the evolution of language, and keep up to date with the terminology which it is acceptable to use to describe any person or group. A judge should be aware that people may identify with a group of their choosing. Assumptions based upon a person's appearance should not be made. Stereotypes, of any sort, are to be avoided. Further guidance is provided in the Equal Treatment Bench Book.⁵
- 8.4 Judges should be aware of their responsibilities under equality legislation, including the Equality Act 2010. A judge should treat litigants, witnesses, legal representatives, court staff, judicial colleagues and any other persons with whom they come into contact, equally and with the same attention subject to any required reasonable adjustments. 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 must not treat that person any differently on that account.⁶ Care should be taken to ensure proper access to justice and equality of treatment where one or more of the parties are unrepresented. A judge's duty to practise equality applies equally to a judge's private life as it does to their professional life.
- 8.5 A judge will apply the same principle of equality and fairness of treatment when discharging any administrative, judicial leadership or judicial

⁴ [Judicial Institute Publications \(judiciary.scot\)](http://judiciary.scot)

⁵ [Judicial Institute Publications \(judiciary.scot\)](http://judiciary.scot)

⁶ Inserted at Judicial Council meeting 24 May 2013

management function in connection with their judicial office.⁷ These principles should also be reflected in conduct outside court.

- 8.6 A judge will be aware that 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 that disability.⁸ A judge should observe those sitting in the court to ensure that those participating in the proceedings are able to do so to the fullest extent. Further guidance is provided in the Equal Treatment Bench Book.⁹

⁷ Inserted at Judicial Council meeting 24 May 2013

⁸ Inserted at Judicial Council meeting 24 May 2013

⁹ [Judicial Institute Publications \(judiciary.scot\)](http://judiciary.scot)

9. THE PRINCIPLE OF COMPETENCE AND DILIGENCE

9.1 Judges must do what they reasonably can to equip themselves to discharge their judicial duties with the high degree of competence that the public expect. 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 is available to them. Salaried judges should devote their professional activity to judicial duties and not engage in conduct incompatible with the diligent discharge of such duties. 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 expected to possess a professional knowledge of the law, since they receive advice on the law from other sources. Lay judges do, however, have an obligation to avail themselves of the available training in other areas of their responsibilities and undergo appraisal, as set out in the Justices of the Peace (Training and Appraisal) Order 2016.

9.2 In adversarial procedure, where practicable, a judge is entitled to rely on counsel or solicitors to make submissions on the current state of the law. If experience demonstrates that such reliance is misplaced, the judge may draw to the attention of those involved that the court has not been furnished with an adequate exposition of the law. If such a course is necessary, it should be followed by according to those involved an adequate opportunity to remedy the perceived shortcomings.

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 a judge may consider it to be. If a judge

considers that the state of the law is unsatisfactory, the judge is entitled to draw attention to that fact publicly, or to refer the matter concerned to the Scottish Law Commission, or other appropriate authority (see, however, para 4.19).

- 9.4 The public have certain expectations of judicial decision making. It is important that these should be met. Written decisions should be formulated in a manner which is comprehensible to the public, so far as that is consistent with the determination of what may be 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.
- 9.5 There should be no undue delay in the issue of judicial decisions. The time reasonably required to formulate a decision is dependent on the nature, number and complexity of the issues with which the judge has to deal; and on the workload imposed upon the judge in relation to other cases. No absolute time limit can be specified. 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 it cannot be, in a particular case, the circumstances should be explained to the judicial administration, with a view to the communication of the reason to the litigants.

Further Guidance on commercial activities

1. All judges should be aware of the guidance on commercial activities relating to their branch of the judiciary.
2. No salaried judge may remain a practising member of the bar, a partner or employee in a law firm, or an employee of a firm dealing with litigation claims.
3. Statute¹⁰ prohibits salaried sheriffs principals, sheriffs and summary sheriffs from engaging in business. The prohibition covers all types of business.
4. Other salaried judges may engage in business, including employment, holding a directorship, or performing another role with management responsibility or control. In every case, the judge will require (a) to consider whether such a role is compatible with the dignity of judicial office, and (b) to seek permission from their Senior Judge who will consider four factors:

(i) The nature of the business and its potential to attract controversy. A positive perception of the judiciary is crucial in order to maintain public confidence in the justice system. Judicial office holders are in a unique position in terms of power and influence and equally in terms of pressure and scrutiny. A judge should not engage in any business which poses a threat to the dignity of judicial office. The possibility of conflict or embarrassment should be minimised;

¹⁰ [Section 15 of the Courts Reform \(Scotland\) Act 2014](#)

(ii) The demands of the proposed role. A judge's primary focus must be their judicial role. The Bangalore principles require judicial office holders to "devote his or her professional activity to judicial duties and not engage in conduct incompatible with the diligent discharge of such duties". Any involvement in a commercial activity should not be unduly onerous, or present a distraction from judicial duties;

(iii) Whether the judge would be subject to any regulatory or other requirements, such as tax obligations, health and safety obligations, director's liabilities and GDPR requirements. Breach of an obligation may raise issues of fitness for judicial office; and

(iv) Whether it would increase the likelihood of a judge having to recuse themselves from judicial work due to a conflict of interest or perception of bias. Recusals should only occur in extreme circumstances. However, such circumstances are far more likely to arise if a judge is active in business.

5. Fee-paid part-time sheriffs and part-time summary sheriffs who remain as practising solicitors may not preside in a sheriff court district where their business is situated.
6. Fee-paid judges may engage in commercial activities, including legal practice, subject to any constraints imposed in connection with appearing before particular courts or tribunals.
7. Justices of the Peace are in a unique position due to the voluntary nature of their judicial work. They may engage freely in commercial activities, subject to the principle of propriety.

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