



**The Judiciary of the Falkland Islands, South Georgia
and the South Sandwich Islands**

CODE OF JUDICIAL CONDUCT



INTRODUCTION

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

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

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

It is intended that the publication of this Code of Judicial Conduct will help to ensure that both the judiciary and the public are aware of the principles by which the judiciary are guided in their personal and professional life.

The principles applicable to judicial conduct have three main objectives:

- *to uphold public confidence in the administration of justice;*
- *to enhance public respect for the institution of the judiciary; and*
- *to protect the reputation of individual judicial officers and of the judiciary.*

Building upon these principles this code seeks to provide guidance on matters with which a member of the judiciary may be faced in carrying out their duties.

Of course no code can deal with every situation with which a member of the judiciary might be faced on a day-to-day basis and the application of general principles in the many varied circumstances which may confront a member of the judiciary may not always be simple. The reality of life in the Falkland Islands which, as a small society, is at times isolated in communications and travel, means that a course of action that might be readily available to members of the judiciary in other larger jurisdictions cannot be strictly applied here. It is recognised that sometimes decisions may not be easy, and that different views might reasonably be taken as to an appropriate course of action in any given circumstance.

It is also recognised that there may be occasions when the interests of justice require that strict adherence to the principles or rules must be departed from.

Consequently, this document is not intended to be prescriptive; its aim is to set out the principles to which all members of the judiciary should seek to adhere and to provide guidance in the ways that they should carry out their duties. The primary responsibility for deciding whether a particular activity or course of conduct is appropriate rests individually with the particular member of the judiciary concerned.

Where there is doubt as to what course should be taken, members of the judiciary should consider seeking the advice of their judicial colleagues, the Senior Magistrate and/or the Chief Justice as appropriate.

In producing this code a number of judicial codes and guides relating to other countries and territories have been considered, from which considerable assistance has been obtained. Much reference has also been made to the Bangalore Principles of Judicial Conduct, a summary of which can be found at Annex A.



The principles set out in this code are applicable to all those who exercise judicial authority in the Courts of the Falkland Islands and of South Georgia and the South Sandwich Islands, including both the professional judiciary, the lay Justices of the Peace, and members of judicial or quasi-judicial tribunals.



THE PRINCIPLES

1. Members of the judiciary should uphold the integrity and independence of the judiciary and perform their duties with competence, diligence and dedication.
2. The Judiciary is an independent branch of government and exercises power alongside the other branches, namely the Executive and the Legislature.
3. Members of the judiciary should conduct themselves, both inside and outside court, in such a manner as not to put in doubt their independence and impartiality or the independence and impartiality of the office that they hold. Judicial independence is sometimes mistakenly perceived as a privilege enjoyed by the judiciary, whereas it is a cornerstone of any civilised society and a fundamental safeguard to the freedoms and rights of the citizen under the rule of law.
4. Members of the judiciary should not only be free from inappropriate connections with, and influence by, the legislative and executive branches of government, but should also appear to a reasonable observer to be free from any such connection or influence.
5. Members of judiciary should not hold any kind of political office which may compromise or be perceived to compromise their independence from the other bodies of government.
6. As well as direct membership of political organisations, members of the judiciary should generally avoid political controversy unless the subject of the controversy itself directly affects the operation of the courts, the independence of the judiciary or the administration of the justice. This also means not participating in public demonstrations which, by associating the member of the judiciary with a political viewpoint or cause, may diminish his or her judicial authority and create, in subsequent cases, a perception of bias.
7. Members of the judiciary are of course entitled, and in certain circumstances are obliged, to make comments in court which might be considered political in nature if they have relevance to the case that is before them. Members of the judiciary cannot avoid entering into politically contentious matters from time to time if they form part of the issues properly brought before them in legal proceedings, are relevant to how the court is able to administer justice and/or they are exercising certain judicial roles.
8. Members of the judiciary often have a considerable amount to offer in their knowledge and experience and may, from time to time, be invited to sit on government committees, inquiries or boards. Whether they do so should be entirely a matter for them, although they should be particularly careful not to be seen as entering into the political arena by agreeing to so serve. They should only accept such an invitation if they are satisfied that their independence will not be compromised in any way, and that their ability to fulfil the requirements of their judicial role will not be undermined or otherwise interfered with.
9. Members of the judiciary have a right to a private and family life and are entitled, just as any other citizen, to exercise the rights and freedoms available to all. There is also a public interest in judges participating, in so far as their office permits, in the life and affairs of the community. However, every member of the judiciary recognises that in accepting office there will be restraints imposed upon them in their public and private lives and that the nature of their office exposes them to considerable scrutiny and puts constraints on their behaviour which other people may not experience. Consequently, members of the judiciary must ensure that their conduct in private,



just as it is in court, is such so that it does not tarnish their personal integrity and dignity which are indispensable for the performance of their duties.

10. Members of the judiciary should ensure that in the exercise of their private and domestic life they conduct themselves in a way that is consistent with their office and that their behaviour does not tarnish their integrity and dignity. Members of the judiciary should always be careful about being present at any place or premises in circumstances where a gathering may not be conducted in accordance with law or where they may risk associating with people who are involved in criminal activities.
11. Members of the judiciary should not hold any post, office or employment or engage in any profession, business or trade which is incompatible with the office they hold. In particular they should not engage in any activity which might compromise or prejudice, or which might be perceived to compromise or prejudice, their independence or which might conflict with their judicial obligations.
12. Members of the judiciary should not, in their time in office, practice as a legal practitioner in the Falkland Islands, neither should they (with the exception of close family) offer, or seek to offer, any advice or counsel to any person in relation to any legal proceedings which are, or are likely to come, within the jurisdiction of the Falkland Islands courts. If they do offer advice to close family they should recuse themselves from any court proceedings relating to the matter.
13. Members of the judiciary should diligently and faithfully discharge their judicial functions. The obligation covers not only intellectual honesty in judging and prompt disposal of work but also a willingness to undertake a fair share of the work of the court. They should attend court and be ready to commence at the listed time. Members of the judiciary should deal with matters assigned to them conscientiously and within a reasonable timeframe, according to the resources placed at their disposal by the Falkland Islands Government and the volume of work assigned to them. If there is to be significant delay in the delivery of a reserved judgment they should make efforts to ensure that the parties are kept informed of the delay and the reasons for it. If a member of the judiciary has difficulty in fulfilling their judicial duties they should inform the courts' administration as soon as possible so that alternative arrangements can be made. Unless exceptional circumstances apply judicial duties should take precedence.
14. Members of the judiciary should decide cases objectively upon the legal and factual merits of the matter before them, without fear or favour, affection or ill will, and in accordance with their conscience and the law. Members of the judiciary should guard against any attempt by others to exert improper influence or pressure upon them and should immediately report any instances of such behaviour to the Senior Magistrate and/or the Chief Justice as appropriate.
15. Where a member of the judiciary is affected by actual bias they must recuse themselves from taking any further part in the case. Such cases are very rare.
16. Members of the judiciary should also recuse themselves where there might be a question as to whether there would be a perception that they might not be able to hear the case fairly (the apparent bias test). The test to be applied is whether a fair-minded observer, having considered the given facts, would consider there was a real possibility that the member of the judiciary would be biased.
17. If there is any concern on the part of the member of the judiciary as to whether the test applies the matter should be raised with the parties and submissions received and considered. Members



of the judiciary should, however, be careful not to agree to recusal where the grounds for such a course are tenuous, trivial or frivolous.

18. In general:

- Members of the judiciary should not sit on cases which involve family members, business associates or work colleagues or close friends.
- Members of the judiciary should not sit on cases in which they, or close family or close friends might have any interest, whether that be financial or otherwise.
- Members of the judiciary should avoid hearing cases in which one of the parties is represented by a close member of their family.

19. In a small society it is perhaps inevitable that members of the judiciary will have some knowledge of those who may appear before them. In addition, members of the judiciary sitting on a case may have heard gossip or speculation about the parties that appear before them. Members of the judiciary should decide cases on the evidence received by them in court, in accordance with the applicable law. They must be particularly careful to ensure that they do not take into account any information that they may have been given about a case or a litigant outside the courtroom. If they are unable to clearly put such matters out of their mind they should recuse themselves from hearing the case. Even if they are content that such knowledge would not influence them they should consider whether the apparent bias test is satisfied.
20. If a member of the judiciary realises that there might be a conflict of interest after proceedings have commenced they should consider the matter and, if necessary, raise it at the first reasonable opportunity with the parties. Even if all parties waive any objection to continuing with the case this is only a factor to take into consideration and the decision as to whether to continue with the case or not is one for the particular member of the judiciary themselves and should be taken with considerable care.
21. Although it must be recognised that the urgency of a situation may be such that a hearing is required in the interests of justice, notwithstanding the existence of arguable grounds in favour of disqualification, this course should only be taken in exceptional circumstances.
22. Members of the judiciary are independent in the performance of their judicial functions, not only from the other branches of government, but also from each other. Members of the judiciary should show respect for their judicial colleagues and should not publically criticise their decisions and judgments, unless this is appropriate or necessary within the context of a court review or appellate proceedings.
23. Although it is acceptable for members of the judiciary to discuss matters with judicial colleagues in order to “pick their brains” they should be careful not to seek advice in circumstances where this might compromise any appeal that might follow.
24. Members of the judiciary should not discuss cases which are pending before the court with members of the public and should discourage any person who might be in their presence from doing so. Members of the judiciary should not discuss the details of a case which is subject to appeal with any person who might sit in the appellate court.
25. Members of the judiciary should not disclose to others the content of discussions which have taken place between members of the court when reaching a decision in a case.



26. There should be no communication concerning the substantive details of a case between members of the judiciary and any party to the case in the absence of all other parties unless the consent of the others has been obtained or the case is being properly considered on an ex parte basis. If any such communication does take place it should be reported and disclosed to all parties at the first reasonable opportunity.
27. Members of the judiciary should not reach firm conclusions on any matter before them until they have heard from all the parties in the case. This does not prevent them from forming preliminary opinions, discussing guidelines, or making known preliminary thoughts for comment and submissions. For instance, it is often perfectly appropriate for the court to say to parties "I am minded to take the following action unless anyone wishes to make submissions to the contrary."
28. Members of the judiciary should not seek to explain, justify or comment upon decisions they have made in court to any person. Judgments may be published where appropriate and press statements can be prepared to summarise judgments, decisions and, where appropriate, the reasoning involved, but other attempts to discuss cases which members of the judiciary have heard or intend to hear with the general public should be avoided.
29. Occasionally communications may be received from litigants or other members of the public. In general, correspondence should not be entered into and the Clerk to the Court should be invited to acknowledge the communication and politely explain that a response from a member of the judiciary is not appropriate. If communications are received which are oppressive or threatening the advice of the Senior Magistrate and/or the Chief Justice as appropriate should be sought. If necessary the police should be notified.
30. Social contact between members of the judiciary and the legal profession is a long-standing tradition. However, care should be taken to avoid direct social contact with legal practitioners who are at that time engaged in a case which is then before them, unless representatives of all the parties are present or consent to such a meeting.
31. Members of the judiciary should, according to the means and the resources that the Falkland Islands Government puts at their disposal, do what they reasonably can to keep themselves up to date and informed about developments in the law and judicial matters. They should attend such training as is made available.
32. Members of the judiciary should carry out their functions with dignity, courtesy and humanity and should use their best endeavours to be punctual. They are to ensure, so far as is practicable, that good order and decorum are maintained in the courtroom where they preside and that every person conducts himself accordingly in court, ensuring that dignity is maintained at all times. Members of the judiciary are well entitled, and in certain circumstances obliged, to make it clear, if necessary in robust terms, their displeasure if satisfied that those appearing before them, in whatever capacity, are failing in their duties and obligations to the court.
33. Members of the judiciary should conduct themselves and proceedings with due regard to the need to ensure equality of treatment to all before the courts according to law. They should ensure, in so far as they can, that all who appear in court are protected from any display of prejudice based on racial, gender, religious, sexuality or other discriminatory grounds. Members of the judiciary should take time to make themselves aware of the diversity in the community they serve.
34. Members of the judiciary should not use any judicial title or style in order to seek to exert pressure over any person in personal matters. Neither should they seek to use the prestige of



their office for personal advantage or for the advantage of another. Official stationery should only be used for official purposes.

35. Members of the judiciary may give character evidence for any person that is well known to them if requested to do so, but should guard against inappropriate requests. They should not use their judicial office to seek to influence those presiding over a case in any way.
36. Members of the judiciary can provide personal references for people they know but, unless the reference request arises out of the knowledge gained from their official duties (such as for a Court Clerk or Coroner's Officer), they should not seek to use their judicial title or style in doing so.
37. Members of the judiciary should not accept gifts, favours or benefits which might influence them or which might give the impression that they could influence them in the proper fulfilment of judicial duties.
38. Members of the judiciary should not seek public, government or media approval for the decisions that they have made or might make. They should be immune to such outside influences. In general, members of the judiciary should not grant interviews about particular cases and should be cautious about accepting offers to grant interviews on other wider matters.
39. However, it should be remembered that the courts and the judiciary are an important part of society and interviews and discussions, lectures and articles by members of the judiciary, and engagement by them with the public in such events such as open days, debates and mock trials may be helpful to promote a greater public understanding of the judicial function and greater confidence in the administration of justice. Publication in legal journals is permissible but requires care to avoid expressing firm views on matters which may come before the court for determination.
40. On occasions a report of court proceedings might be inaccurate to a significant degree so as to justify seeking a correction. In such circumstances the advice of the Senior Magistrate and/or Chief Justice should be sought as to whether it is appropriate, in the particular circumstances involved, to issue a statement to the media.
41. If a member of the judiciary has any concerns about the behaviour of a colleague they should raise the matter in the first instance with the Senior Magistrate and/or the Chief Justice as appropriate.
42. Members of the judiciary should notify His Excellency the Governor and the Chief Justice if they are charged with, or convicted of, any criminal offence, other than a parking offence.
43. If there is any doubt as to whether conduct or proposed conduct might be contrary to these guidelines members of the judiciary should seek the views of the Senior Magistrate and/or the Chief Justice as appropriate.

Issued under the authority of Simon Bryan QC, Chief Justice of the Falkland Islands and Chief Justice Designate of South Georgia and the South Sandwich Islands on 16 December 2015.



Annex A

The Bangalore Principles

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

The stated intention of the Bangalore Principles is: *“To establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the Executive and Legislature, and lawyers and the public in general, to better understand and support the judiciary”.*

The principles are set out in “six values” which are as follows:

(i) Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

(ii) Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

(iii) Integrity is essential to the proper discharge of the judicial office.

(iv) Propriety, and the appearance of propriety, are essential to the performance of all of the activities of the judge.

(v) Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

(vi) Competence and diligence are prerequisites to the due performance of judicial office.



Annex B

The Falkland Islands Constitution

Oaths

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

The Judicial Oath

Judicial Oath (or affirmation)

I, _____, do swear (or solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, in the office of (here insert description of the office) and will do right to all manner of people according to the Constitution and other laws in force in the Falkland Islands, without fear or favour, affection or ill will. So help me God. (To be omitted in affirmation).



Annex C

Acknowledgements

In producing this code reference has been made to judicial codes guides from a number of other jurisdictions including those from:

Australia

Bermuda

England and Wales

Gibraltar

Hong Kong

Isle of Man

Jersey

Scotland

The Supreme Court of the United Kingdom