



TO SET OUT THE MINIMUM STANDARDS REQUIRED OF ALL ADVOCATES APPEARING BEFORE THE MAGISTRATE'S AND SUMMARY COURTS OF THE BRITISH OVERSEAS TERRITORY OF THE FALKLAND ISLANDS

Introduction

1. The aim of the following Practice Direction is to raise and maintain the standard of advocacy preparation and presentation in the Magistrate's Court and the Summary Court of the Falkland Islands by highlighting the minimum standards which the court expects will be complied with by all advocates, in cases appearing before the courts.
2. The court appreciates that practicing law in the Falkland Islands has particular challenges and due to its often confusing state and inaccessibility can, at times, be very difficult. However, the people of the Islands are entitled to receive the same level and quality of representation and the same advocacy standards as they would receive in other jurisdictions. The problems associated with practicing Falkland Islands law have to be surmounted to ensure that justice is properly done.
3. This practice direction does not seek to deal with specific matters of professional conduct and ethics. However, all advocates are assumed to have appropriate knowledge of relevant codes and guidelines in this regard, such as the Codes of Conduct relating to the Bar of England and Wales and to the Law Society, the Attorney General's Guidelines, the Farquharson Guidelines, the Code for Crown Prosecutors and the National Standards for Advocacy. Advocates should also display a knowledge and appreciation of the commonly applicable standards of equality and diversity.
4. In addition, it is acknowledged that advocates will have specific professional obligations and owe particular duties to their clients (such as the duty of privilege). This direction should be read in the light of this.

Practice Direction

1. All advocates should be in a position to provide assistance to the court in relation to all matters before it and in the general administration of justice.
2. Although the Falkland Islands have their own laws and court practices and procedures, these are drawn heavily from those of England and Wales. The advocate should therefore have a sound knowledge of relevant guidelines and practice directions issued by the Law Courts and the Judiciary of England and Wales.
3. Advocates should attend court promptly and in good time in order to be in a position to discuss matters with the party, or parties, on the other side, if this is appropriate, so as to be able to clarify areas of agreement and dispute and so as to be ready to proceed at the listed time. If advocates need further time for any reason which will mean that the court cannot sit at the listed time they should, in the first instance, ask the Clerk to the Court to speak to the Judge or Bench. If necessary an application can be made in court.
4. Advocates should be fully aware of the correct form of address in court, of court etiquette and procedure and should be dressed appropriately for the court in which they are appearing, in accordance with any direction given as to robes to be worn.
5. Advocates should have a sound knowledge as to what rules of court are to be applied and how it is said that those rules apply.
6. Advocates should be fully aware of the main issues of substantive law surrounding the case before the court including the provisions of the Constitution, all relevant UK and Falkland Islands legislation and all relevant common law principles and case law relating to the area of law being dealt with. Advocates should be able to assist the court by providing information as to how it is said that the particular law or principles apply in the Falkland Islands.
7. No advocate should assert matters as being law without a knowledge of where such an assertion derives from, the basis for it, and the ability to demonstrate and direct where the relevant legislation or principle is to be found. It is not appropriate to inform the court that a procedure has been "followed in the past" unless the legal basis for that is known.
8. Advocates should have knowledge of any guidelines which are applicable and relevant to the case before the court. For example, in sentencing matters advocates should have knowledge of any relevant Sentencing Council guidelines, Court of Appeal cases guidelines, and the law and procedure relating to any relevant ancillary orders. Where written submissions are to be provided to the Court they should be provided in good time for the hearing and in accordance with any directions given.
9. Advocates should have a sound knowledge of the rules of evidence relating to the area of law being dealt with in the case.

10. The advocate who is appearing before the court should be in a position to take responsibility for the case. Except in exceptional circumstances it is not acceptable for the advocate to claim that 'this is not my case'. If a case is not usually dealt with by the advocate then appearing before the court and has been 'returned' by another advocate, or is being dealt with on an interim basis by a local Legal Practitioner in the absence of Counsel from abroad, it is the responsibility of the advocate then appearing to liaise fully with others in order to ensure that all the information needed for the particular hearing has been obtained.
11. Similarly, whilst there are times when an advocate will have to refer to others for full instructions on some issues that may arise, applications for this to be done should not be routine. It is for the advocate appearing before the court to know the details of the case and to be in a position to take relevant decisions (and explain them if necessary) in relation to the conduct of the case.
12. Whilst the court will always try to accommodate time requested in order to research esoteric points of law that may arise ex improviso all advocates should be aware of all standard core pieces of information of relevance to the court and should ensure that this is obtained, prepared and ready for every hearing.
13. Prior to attending court all advocates should have fully reviewed the case file and have used their best endeavors to ensure that the hearing can proceed as effectively as possible. Matters for consideration prior to the hearing might include:
 - (i) that the case has been brought in proper form,
 - (ii) that all preliminary matters have been identified and addressed, and
 - (iii) that all appropriate applications and other matters can be put before the court at the first reasonable opportunity. For example, the advocate should have obtained the details and availability of all proposed witnesses in time for the court to be able to set a trial or hearing date, be aware if a witnesses will be seeking special measures, or be able to indicate to the court that an evidential ruling will be sought.
 - (iv) that any obligations relating to disclosure are being or have been properly complied with or any problems or issues have been identified and can be addressed.
 - (v) that the court is made fully aware of any special circumstances known to them in relation to a case in advance, such as the need for an interpreter or the need for technical equipment etc.
14. Advocates should ensure that they are fully aware of the facts as they are then known. If the facts are not obvious or require clarification the advocate should use their best endeavours to seek all necessary information before the hearing. Advocates should do all that they reasonably can to ensure that all factual information provided to the court is accurate, clear and unambiguous and that all relevant material is available to the court. An advocate must not deceive or knowingly or recklessly mislead the court. If the court has been provided with inaccurate information this should be corrected as soon as possible.
15. Where a case relies upon material such as photographs or videos the advocate should ensure that sufficient copies are available for the hearing and that, where necessary, the court has been notified before the hearing of the need for technical equipment within the courtroom. The advocate should check with the Clerk to the Court that it is functioning correctly before the hearing commences.

16. Advocates should ensure that all court directions are fully complied with or if they cannot they must inform the court in good time, with an explanation and, where appropriate, a request for a hearing for the directions to be further considered.

17. Where a mistake as to law is made by the court the advocate should be in a position to so advise the court and invite the court to deal with the matter appropriately, e.g. for instance by the application of “the slip rule”.