

GUIDELINES FOR THE JUDICIARY ON CONDUCT AND ETHICS

Foreword

The rights of access to justice, equality before the law and a fair hearing by an independent and impartial judiciary are the basis of every person's rights. The statement of rights has however no value without enforcement of those rights. Enforcement of rights depends on the proper administration of justice.

Public confidence in the justice system depends on the integrity and authority of the judiciary. The high expectations which the public is entitled to have in this regard are matched by those of the Constitution, which places a serious responsibility on the judiciary willingly accepted by judges. On appointment, every judge makes the following declaration (Art 34.6.1):

[...] I do solemnly and sincerely promise and declare that I will duly and faithfully and to the best of my knowledge and power execute [my] office without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws.

Article 35.2 of the Constitution reiterates the responsibilities of the judge, stating that:

All judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law.

These responsibilities are shared by judges across the world. In 2002, the United Nations Judicial Group on Strengthening Judicial Integrity, a group composed of senior judges from around the globe, agreed a set of principles of judicial conduct known as the Bangalore Principles which were endorsed at the 59th session of the United Nations Human Rights Commission at Geneva in April 2003. These principles - judicial independence, impartiality, integrity, equality, propriety, competence and diligence - have become a standard accepted by judiciaries and the public around the world, providing a clear statement of the individual elements of judicial integrity. The importance of the Bangalore Principles in both building public confidence and supporting the work of the judiciary is explained in the Preamble, which says that 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 the legislature, and lawyers and the public in general, to better understand and support the judiciary.

In introducing the Commentary on the Bangalore Principles, the Chair of the Judicial Integrity Group in 2007 described the vital role of the judiciary in our world, a role which the Judicial Council of Ireland endorses and seeks to promote:

A judiciary of undisputed integrity is the bedrock institution essential for ensuring compliance with democracy and the rule of law. Even when all other protections fail, it provides a bulwark to the public against any encroachments on rights and freedoms under the law. These observations apply both domestically - in the context

of each nation State - and globally, viewing the global judiciary as one great bastion of the rule of law throughout the world. Ensuring the integrity of the global judiciary is thus a task to which much energy, skill and experience must be devoted.

It is these highly respected international standards on which the Oireachtas drew in framing the Judicial Council Act 2019. Recognising the Bangalore Principles' injunction that the articulation of judicial conduct standards and the regulation of judges' adherence to them is a matter for the independent judiciary, the Act established the Judicial Council and set out its functions in s. 7(1)(b) (and indeed the function of the Judicial Conduct Committee in s. 43(2)) as including the promotion and maintenance of:

high standards of conduct among judges, having regard to the principles of judicial conduct requiring judges to uphold and exemplify judicial independence, impartiality, integrity, propriety (including the appearance of propriety), competence and diligence and to ensure equality of treatment to all persons before the courts.

To this end, the Act required that the Judicial Conduct Committee should:

prepare and submit to the Board for its review draft guidelines concerning judicial conduct and ethics, which guidelines shall include guidance as to the matters a judge should consider when deciding whether he or she should recuse himself or herself from presiding over legal proceedings, for adoption by the Council.

The Bangalore Principles state standards which the judiciary and people of this country have long expected of our judges and which form the basis of the draft guidelines prepared by the Judicial Conduct Committee and submitted to the Board of the Council which has reviewed them and adopted them after consideration and some modifications and recommended them for adoption by the Council. The Principles are set out in this document and elaborated on where necessary to reflect the issues and challenges which judges face in contemporary Ireland. In adopting them, the Council is mindful of the clear statement in s. 93 of the Act that:

Nothing in this Act shall be construed as operating to interfere with—

- (a) the performance by the courts of their functions, or
- (b) the exercise by a judge of his or her judicial functions.

The guidelines apply to all judges in our justice system. They do not constitute a code, or rules. Rather, they are a set of principles designed to enable judges to come to their own decisions on the ethical and conduct issues which they face and to help the public understand the role of the judiciary and their professional standards.

In addition to their function in promoting the highest standards of judicial behaviour, and in assisting judges to make their own decisions on matters of ethics and conduct, the guidelines will also provide a framework for the conduct review function of the Judicial Council. The Judicial Conduct Committee will have regard to these guidelines when determining whether complaints before it amount to judicial misconduct. In that regard, judicial misconduct under the Act means conduct (whether an act or omission) by a judge,

whether in the execution of his or her office or otherwise, and whether generally or on a particular occasion, that—

(a) constitutes a departure from acknowledged standards of judicial conduct, such standards to have regard to the principles of judicial conduct referred to in sections 7 (1)(b) and 43 (2), and

(b) brings the administration of justice into disrepute.

The guidelines are not a code. They seek to promote high standards of behaviour. It will be for the Judicial Conduct Committee to decide in the light of the Irish experience and the facts of any case whether any departure or deviation from the guidelines is of such a nature as to amount to judicial misconduct. The Judicial Conduct Committee also has a function in providing advice and suggesting amendments to the guidelines, and it is to be anticipated that the guidelines and our understanding of them and the broader obligations of judicial conduct will develop over the coming years.

However the adoption of these guidelines by the Judicial Council is an important step in the promotion of standards of behaviour which the Constitution contemplates as part of the administration of justice, in courts, by judges. I commend these guidelines to judges, members of the legal profession, members of the public and others having dealings in courts, and indeed everyone who is concerned to see justice administered in a manner that achieves the high standards to which judges seek to hold themselves and which the public is entitled to expect.

Donal O'Donnell

Chief Justice

4th of February 2022

The following may be of assistance in interpreting the guidelines

References

Bunreacht na h-Éireann / Constitution of Ireland

The Judicial Council Act 2019

The Bangalore Principles of Judicial Conduct (United Nations 2002)

Guidelines for the Judiciary on Conduct and Ethics

Judicial Council

Adopted by the Judicial Council with effect from the 1st day of June 2022

Principle 1 : Independence

Principle:

As recognised by the Constitution, 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.

Application:

1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.

1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free from such things.

1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.

1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

Principle 2 : Impartiality

Principle:

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.

Application:

2.1 A judge shall perform his or her judicial duties without fear or favour, affection or ill-will, bias or prejudice.

2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to recuse him or herself from hearing or deciding cases.

2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

2.5 A judge shall recuse himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where

2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or

2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that recusal of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

2.6 A judge who is requested by a party to recuse himself or herself, or who apprehends that there may be grounds for recusal, other than those grounds set out above, shall consider such issue dispassionately and without undue sensitivity. The proviso that recusal is not required if no other tribunal can be constituted or because of urgent circumstances continues to apply.

While it is not possible to list all the criteria that might apply, the judge should, in particular, bear in mind the following guidance.

2.6.1 It is the duty of a judge to sit and hear cases.

2.6.2 A judge should recuse himself or herself if a reasonably objective and informed person would, on the correct facts, reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case. The reasonableness of such an apprehension must be assessed in the light of the constitutional declaration made by judges on taking up office, and their ability to fulfil that declaration by reason of their training and experience. It must be assumed that they can clear their mind of irrelevant personal beliefs.

2.6.3 If a request for recusal is grounded upon an assertion of objective bias, the judge should remember that such a ground does not imply personal criticism but is concerned with the perception of partiality in the eyes of a reasonably objective and informed observer.

2.6.4 Objective bias is not to be inferred merely from the fact that a judge has made interim or interlocutory orders in the proceedings, or has presided over a trial that did not come to a final verdict, or may have made legal errors in that process.

2.6.5 Objective bias may be established by showing that the judge has acted in such a manner as to give rise to a reasonable apprehension that he or she will decide the case without proper consideration of the evidence and submissions.

Principle 3 : Integrity

Principle:

Integrity is essential to the proper discharge of the judicial office.

Application:

3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Principle 4 : Propriety

Principle:

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Application:

4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

4.2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.

4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession, in a manner which is inconsistent with the propriety of judicial office.

4.6 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall 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 judiciary.

4.7 A judge shall make reasonable efforts to inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.

4.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgement as a judge.

4.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge 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.

4.10 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.

4.11 Subject to the proper performance of judicial duties, a judge may:

4.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;

4.11.2 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;

4.11.3 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 and political neutrality of a judge; or

4.11.4 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.

4.12 A judge shall not practise law whilst the holder of judicial office

4.13 A judge may form or join associations of judges or participate in other organisations representing the interests of judges.

4.14 A judge and members of the judge'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 judge in connection with the performance of judicial duties.

4.15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with the judge's duties or functions or which might reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

4.16 Subject to law and to any legal requirements of public disclosure, a judge 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 judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

Principle 5 : Competence and diligence

Principle:

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

Application:

5.1 The judicial duties of a judge take precedence over all other activities.

5.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.

5.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.

5.4 A judge shall take reasonable steps to keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.

5.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness taking into account available resources and the length or complexity of the case and other work commitments of the judge.

5.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.

5.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

Principle 6: Equality

Principle:

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

Application:

6.1 A judge shall 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, ethnicity, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").

6.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

6.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

6.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground immaterial to the proper performance of their role.

6.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

GLOSSARY

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

"Court staff" means any person employed by the Courts Service.

"Judge" means a judge of the Supreme Court, the Court of Appeal, the High Court, the Circuit Court or the District Court

"Judge's family" includes a judge's spouse, civil partner, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household.

"Judge's spouse" includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

"Litigant" means a person who is bringing or defending proceedings.