**Mandate of the Special Rapporteur on the independence of judges and lawyers**

**Response from Northern Ireland**

1. Please provide detailed information on the constitutional, legislative and regulatory provisions on the exercise of the right to freedom of expression, the right to freedom of association, the right to peaceful assembly and the political rights of judges and prosecutors. Do these provisions expressly cover the exercise of these rights online, for instance through digital technologies such as the Internet and social media?
2. The UK is party to the European Convention on Human Rights (ECHR) which requires Parties to secure to everyone within their jurisdiction certain rights and freedoms including the right to freedom of expression (Article 10), and the right to freedom of peaceful assembly and freedom of association (Article 11). The ECHR is given further effect in UK law by the Human Rights Act 1998.
3. There is a legislative provision that guarantees judicial independence (Constitutional Reform Act 2005) which states that:

*“The Lord Chancellor, other Ministers of the Crown and all with responsibility for matters relating to the judiciary or otherwise to the administration of justice must uphold the continued independence of the judiciary*.”

In Northern Ireland, judicial independence is guaranteed in section 1 of the Justice (Northern Ireland) Act 2002. Section 1 provides:

(1)The following persons must uphold the continued independence of the judiciary—

(a)the First Minister,

(b)the deputy First Minister,

(c)Northern Ireland Ministers, and

(d)all with responsibility for matters relating to the judiciary or otherwise to the administration of justice, where that responsibility is to be discharged only in or as regards Northern Ireland.

(2)The following particular duty is imposed for the purpose of upholding that independence.

(3)The First Minister, the deputy First Minister and Northern Ireland Ministers must not seek to influence particular judicial decisions through any special access to the judiciary.

(4)In this section “the judiciary” includes the judiciary of any of the following—

(a)the Supreme Court;

(b)any other court established under the law of any part of the United Kingdom;

(c)any international court.

(5)In subsection (4) “international court” means the International Court of Justice or any other court or tribunal which exercises jurisdiction, or performs functions of a judicial nature, in pursuance of—

(a)an agreement to which the United Kingdom or Her Majesty's Government in the United Kingdom is a party, or

(b)a resolution of the Security Council or General Assembly of the United Nations.

1. There is a statutory prohibition on salaried judges from becoming members of the House of Commons and from sitting or voting in the House of Lords, a committee of the House of Lords or a joint committee of both Houses, or the Northern Ireland Assembly.[[1]](#footnote-1) It is also set out in the memorandum on conditions of appointment and terms of service for judges which explains that judges should avoid any appearance of political ties – e.g. by attending political gatherings, political fundraising events, contribution to political parties or speaking within political forums. The terms of service also state that ‘*Judges must ensure that while holding judicial office they conduct themselves in a manner consistent with the authority and standing of a judge. They must not, in any capacity, engage in any activity which might undermine, or be reasonably thought to undermine, their judicial independence or impartiality*.’
2. Freedom of expression can be restricted by public authorities under Article 10 European Convention on Human Rights if it can be shown that their action is lawful, necessary and proportionate in order to maintain the authority and impartiality of judges. European Court of Human Rights case law suggests that, regarding the right to freedom of assembly and association, judges are part of the administration of the State and therefore it is possible to impose restrictions under Article 11 ECHR.
3. There are no other constitutional or legislative provisions regarding specifically the exercise of the right to freedom of expression, of association or to peaceful assembly of judges.
4. The Lord Chief Justice of England and Wales and the Senior President of Tribunals (UK) authorised the Guide to Judicial Conduct, first published by the Judges’ Council in October 2004, with the latest revision published in March 2018[[2]](#footnote-2). It offers assistance to judges, coroners and magistrates about their conduct and is based on the principle that responsibility for deciding whether or not a particular activity or course of conduct is appropriate rests with each individual judge. This Guide is therefore not a code, nor does it contain rules other than where stated. Instead, it contains a set of core principles which will help judges reach their own decisions.

The Guide explains the three basic principles guiding judicial conduct: judicial independence, impartiality and integrity, which are distilled from the six fundamental values set out in the Bangalore Principles of Judicial Conduct [[3]](#footnote-3)[[4]](#footnote-4) (so implicitly includes Bangalore Principles, Value 4: Propriety, 4.6).

The Guide provides guidance on maintaining impartiality: that ‘*judges should, so far as is reasonable, avoid extra-judicial activities that are likely to cause them to have to refrain from sitting because of a reasonable apprehension of bias or because of a conflict of interest that would arise from the activity*’.

The Guide explains that the use of social networking is a matter of personal choice, but draws judges’ attention to security aspects; and states that *whilst blogging by members of the judiciary is not prohibited, judicial office-holders who blog (or who post comments on other people’s blogs) must not identify themselves as members of the judiciary. They must also avoid expressing opinions which, were it to become known that they hold judicial office, could damage public confidence in their own impartiality*.

The Supreme Court has adopted its own Guide to Judicial Conduct[[5]](#footnote-5), published in 2009, as prepared and supported by the Justices of the Supreme Court. This Guide draws upon the principles contained in a revised version of the Guide for Judges in England and Wales which was published in March 2008 and refers to the Bangalore Principles of Judicial Conduct.

In Northern Ireland the Office of the Lord Chief Justice (‘OLCJ’) has issued a [Statement of Ethics for the Judiciary in Northern Ireland](https://www.nijac.gov.uk/sites/nijac/files/media-files/A%20Statement%20of%20Ethics%20for%20the%20Judiciary%20in%20Northern%20Ireland.pdf), broadly similar to the Guide to Judicial Conduct, which expressly refers to the Bangalore Principles as underpinning the Statement. As regards the need for impartiality see section 4 generally; section 4.3 specifically states that ‘a judge must forgo any kind of political activity and, on appointment, sever all ties with political parties. An appearance of continuing ties by, for example, attendance at political gatherings, political fundraising events or through contribution to a political party, should be avoided. The need for self-restraint also involves not participating in public demonstrations which, by associating the judge with a political viewpoint or cause, may diminish his authority as a judge and create in subsequent cases a perception of bias.’ The OLCJ has, similar to England & Wales, issued IT And Information Security Guidance For The Judiciary Of Northern Ireland.

1. Guidance on relations with the media is provided by the Judicial Communications Office (JCO). In Northern Ireland similar guidance is provided by the Lord Chief Justice’s Private Office.
2. Please provide information on cases where judges and prosecutors in your country were subject to legal or disciplinary proceedings for an alleged breach of their obligations and duties in the exercise of their fundamental freedoms, both offline and online. Please also provide information on cases where judges or prosecutors have been subject to threats, pressure, interference or reprisal in connection with, or as a result to, the exercise of their fundamental freedoms.
3. The Lord Chief Justice and the Lord Chancellor are jointly responsible for considering and determining complaints about the personal conduct of all judges in England and Wales (and some judges who sit in Tribunals in Scotland and Northern Ireland). The Judicial Conduct Investigations Office (JCIO) is an independent statutory body which provides advice to the Lord Chancellor and Lord Chief Justice in their joint responsibility for judicial discipline. Their statutory remit is to deal with complaints of misconduct. The JCIO will normally publish a statement on their website when a disciplinary sanction has been issued to a judicial office holder following a finding of misconduct.

In Northern Ireland the Lord Chief Justice is responsible for determining judicial complaints in a broadly similar manner under a written Code of Practice required by s. 16 of the Justice (Northern Ireland) Act 2002.

1. There are no instances recorded of judges being subject to legal or disciplinary proceedings in the exercise of their fundamental rights.
2. Please provide information on whether, and to what extent, the exercise of the fundamental freedoms referred to above has been regulated in codes of judicial ethics or professional conduct developed by professional associations of judges and prosecutors in your country. Do these codes expressly include provisions concerning the exercise of these rights through the use of digital technologies?
3. Please see answer to question 1. We are not aware of any additional guidance issued by judges’ associations.
4. What kind of restrictions (constitutional, legal or regulatory) can be found in your legal system to the exercise of these freedoms? What is the rationale for these restrictions? Do these restrictions apply both offline and online? And if not, are there particular restrictions on the exercise of these rights through the use of digital technologies?
5. There are no restrictions in the legal system on judges exercising the above freedoms.
6. Please elaborate on the nature of restrictions specifically applicable to the exercise of fundamental freedoms by judges and prosecutors. In particular:
* Are these restrictions dependent on the position and matters over which the particular judge/prosecutor has jurisdiction?
* Should the venue or capacity in which these opinions are given be taken into account (for instance, whether or not they were exercising or could be understood to be exercising their official duties)?
* Should the purpose of such opinions or demonstrations be taken into account?
* To what extent, if at all, is the context – such as democratic crisis, a breakdown of constitutional order or a reform of the judicial system – relevant when evaluating the applicability of these restrictions?

N/A

1. Please provide information on the scope or interpretation that has been given to these restrictions by national courts, national judicial councils, prosecutorial councils or equivalent independent authorities with general responsibilities for disciplinary proceedings against judges and, where applicable, prosecutors. Please provide specific examples of these instances.

N/A

1. Please provide information on initiatives undertaken by professional associations of judges and, where relevant, prosecutors, to raise their awareness of the risks associated with the exercise of their rights online, particularly on social media.
2. See the answer to question 3.
3. Page 20 of the Guide on Judicial Conduct covers Social Activities: <https://www.judiciary.uk/wp-content/uploads/2016/07/judicial-conduct-v2018-final-2.pdf>
1. House of Commons Disqualification Act of 1975 and to the Northern Ireland Assembly

Disqualification Act of 1975 \*(section 1 and Schedule 1), Constitutional Reform Act 2005. [↑](#footnote-ref-1)
2. <https://www.judiciary.uk/wp-content/uploads/2016/07/judicial-conduct-v2018-final-2.pdf> [↑](#footnote-ref-2)
3. <https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf>) [↑](#footnote-ref-3)
4. 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 [↑](#footnote-ref-4)
5. https://www.supremecourt.uk/docs/guide-to-judicial\_conduct.pdf [↑](#footnote-ref-5)