



LORD CHIEF JUSTICE
OF ENGLAND AND WALES



SENIOR PRESIDENT
OF TRIBUNALS

Media Guidance for the Judiciary

Including courts and tribunal judges, non-legal
members in tribunals and magistrates

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Preface

Preface by the Lord Chief Justice and Senior President of Tribunals

This revised edition of the Media Guide provides practical advice and details of the support and advice available from Judicial Press Office, with their contact details.

This guidance is for all judicial office-holders in England and Wales, and tribunals judiciary within the remit of the Senior President in Scotland and Northern Ireland.

We urge you that should you find yourself in the media spotlight, which can be an uncomfortable experience, you take full advantage of their professional expertise.

There are responsibilities on the judiciary to allow media access to proceedings wherever possible and

equally responsibilities on the media to report these proceedings fairly and accurately.

Judicial office-holders should exercise their freedom to talk to the media with the greatest circumspection. As Lord Bingham has commented, 'a habit of reticence makes for good judges'. A judicial office-holder should refrain from answering public criticism of a judgment or decision, whether from the bench or otherwise. They should not air disagreements over judicial decisions in the press. In his speech in the House of Lords on 21 May 2003, Lord Woolf CJ referred to "the very important convention that judges do not discuss individual cases".

We are sure you will find this Guide of practical assistance and we commend it to you.



Rt Hon Lord Judge
Lord Chief Justice



Rt Hon Sir Robert Carnwath
Senior President of Tribunals

Introduction

Public scrutiny of the justice system continues to grow. The introduction of 24 hour news channels, rolling news web editions of the print media and social media have all contributed to the trend.

This has resulted in ever more requests for judicial office holders to appear on television and radio programmes or to give interviews to the press. There has also been a proliferation of subjective media comment, including editorials and opinion columns (and by no means confined to the national press) about individual judges and cases, but also about the judiciary generally.

As the Lord Chief Justice, Lord Judge, told the House of Lords Select Committee on the Constitution on 15th December 2010:

“The relationship between the judiciary and the media is very interesting. I think that judges have to face the fact that they live in a very fast-moving information world and that what judges do is a matter of public interest, and sometimes concern. Judges have to realise that where there is concern, it needs to be thought about..... What I am really driving at is that in 2010 there has to be a different attitude by judges to the newspapers and the media and by the media and newspapers to judges.”

In 1989 the then Lord Chancellor, Lord Mackay, issued guidance to judges on how to address media interest in their work in the form of a letter to the Lord Chief Justice. The principles in it apply equally to the magistracy and tribunals judiciary. This stressed that it should be left to judges themselves to decide whether, and on what conditions, they should give interviews to journalists or appear on radio or television. The tenets of his letter still hold true.

While Lord Mackay made it clear that judges:

“must avoid public statements either on general issues or particular cases which might cast any doubt on their complete impartiality, and above all, they should avoid any involvement, either direct or indirect, in issues which are or might become politically controversial”,

he felt that there were cases in which the media might:

“in a spirit of enquiry, wish to explore matters affecting the legal system so as to secure a wider public understanding of the working of the law, and that the value of such programmes may be enhanced by the participation of judges”.

Before the Constitutional Reform Act changes, the Lord Chief Justice and other senior judges could speak out in the House of Lords, on behalf of the judiciary, on matters affecting the administration of justice, such as mandatory life sentences for murder.

During the 1996 debate on public controversy and the judiciary in the House of Lords, Lord Irvine, then-shadow Lord Chancellor, said:

“There is a distinction between judicial participation in public controversy of a political nature and the judges’ participation in public controversy concerning the effective administration of justice I think that judges would be wise to confine themselves to controversy about the administration of justice. If they engage more extensively in political controversy, they risk undermining public confidence in their political impartiality.”

Later that year, shortly after his appointment as Lord Chief Justice, Lord Bingham of Cornhill echoed this sentiment when he said:

“I think it is absolutely fundamental that judges should be very careful indeed to make sure that they do not publicly make statements that undermine their reputation for impartiality and neutrality.”

Following the Constitutional Reform Act changes, the Lord Chief Justice as head of the judiciary has assumed the mantle of representing judicial concerns and interests on the national stage. The Tribunals, Courts and Enforcement Act 2007 conferred the same responsibilities in respect of tribunals judiciary on the Senior President.

At a media briefing in October 2005 the then Lord Chief Justice, Lord Phillips, summarised this role in the new constitutional landscape:

“I have made it plain that it is no part of my job as a serving judge to comment on Government policy. I would like to see my relationship with ...

Ministers ... as a good relationship with the possibility to provide assistance where it is appropriate. Where it is appropriate is if the Government are considering legislation and want to know, for instance, what implications the legislation might have for judicial resources. In that kind of area, I should be very keen to advise.”

In giving evidence to the House of Lords’ Constitution Committee in 2010, the current Lord Chief Justice, Lord Judge, said:

“We have to be very careful not to be seen to be entering into the political arena, so that if a proposal is—if I may put it this way—party-political in the sense that there appears to be a political divide between the Government and the Opposition, we have to be extremely careful and tactful about it, but where there is a consultation paper, there is absolutely no reason why we should not respond to it. ... We have to be very careful that judges cannot get mixed up in the political process and, more importantly, be seen to have got mixed up in the political process.”

Judicial Press Office

The Judicial Press Office operates a 24 hours a day, seven days a week service to help you with urgent press matters. For enquiries, out of normal office hours, you can contact the duty press officer by calling the duty pager – 07659 550652.

It is a specialist, dedicated facility to support judicial office-holders (magistrates and courts judges in England and Wales and tribunal judges and members across England, Wales and Scotland).

Based at the Royal Courts of Justice as part of the Judicial Office, the Judicial Press Office works directly to the Lord Chief Justice and Senior President of Tribunals and is independent of the Ministry of Justice and HM Courts and Tribunal Service.

It provides advice and support to judicial office-holders on interview bids, misreporting, the handling of potentially controversial issues, and any other media issues.

Operating a 24/7 service so it can respond to media interest as it arises, the team also anticipates wherever possible high profile and controversial issues and prepares statements and responses in advance, involving the relevant members of the judiciary.

As appropriate, the Judicial Press Office draws the media's attention to significant judgments, speeches and statements, providing written copies when available.

Press Matters - how the Press Office can help

JO press officers can assist judges in a number of ways:

- in instances of misreporting, they can issue a statement to the media on your behalf correcting errors of fact (see section on misreporting).

- before passing sentence or issuing a decision in a controversial case, or in a case where your sentence/decision departs from the norm, you might consider preparing a written note of your sentencing remarks or summary of your decision to be given by hand to reporters in court or at the tribunal hearing (see section on Dealing with exceptional cases). You may also wish to fax or e-mail these notes to the Judicial Press Office for distribution to the wider media. This will help reporters to quote you accurately
- they can distribute important speeches to the media, or issue statements – always making it clear that this is being done on behalf of the individual judge. They can also place important speeches on the judicial website
- they let judicial office-holders know about breaking news stories that affect them individually or collectively.

What it can't do

- It will *never* attempt to interpret a judicial decision to a journalist. When speaking to the media or offering advice to individual judicial office-holders, press officers are always careful to stress the importance of judicial independence. Comment on a judicial decision would breach this principle, as well as being seen, however wrongly, as tending to anticipate or prejudice any appeal proceedings that may ensue
- While they understand how hurtful and irritating unfair criticism of, or personal comments about, judicial office-holders can

While the Press Office understands how hurtful and irritating unfair criticism of, or personal comments about, magistrates and judges can be, there is little they can do - except in cases of misreporting or factual error.

be, there is little they can do - except in cases of misreporting or factual error. It is for judicial office-holders themselves to report instances of false reporting, unfair criticism or harassment to the Press Complaints Commission (PCC) or broadcast organisations to demand corrections from the media as appropriate. However, press officers are always available to discuss such a course of action and offer support and advice.

Corporate Communications Team

Working alongside the Judicial Press Office is the Corporate Communications Team. That team is responsible for developing and maintaining five main channels of communications:

- intranets - the judicial intranet (including managing judicial subscriptions, providing technical support to users and sending out regular alerts), the Judicial Office intranet, and the Judicial Portal;
- the judicial business newsletter, *Benchmark*;
- websites - including the public-facing Judiciary of England and Wales website and related public-facing sites, such as that for the 7/7 Inquests;

- publications - typesetting and arranging the printing and publication of judicial and Judicial Office publications.
- It also advises other organisations and Government departments on the best way to communicate with the judiciary. The team's aims are to make sure that knowledge is transmitted and shared effectively across the judiciary and to prevent the judiciary from being deluged with communications from all sides.

Standing Committee on Communications of the Judges' Council

Advises the Judges' Council and through them the JEB on matters relating to the media and communications. Specifically they:

- Consider issues affecting internal and external communications, including ensuring development of the Communications Strategy agreed by the Judges' Council.
- Propose strategies for ensuring good internal communication across the judiciary, including the use and future development of e-communication systems such as the intranet and the website.
- Consider and propose communication strategies to help judiciary dealing with the media.
- Work with the JCO to develop pro-active media coverage which broadens public understanding of the judiciary.
- Support the use of the media trained panel of judges.

- Provide a short report each term to the Judges' Council and the JEB, about issues the committee has considered and action taken.

Media Trained Panel of Judges

The Media Panel was established in 2008. The panel are judges who have been “media trained” and they are well placed to respond to requests from the media for information. The role of the panel and its

membership is regularly reviewed so that its members can be used effectively.

“We have a number of judges who are, in effect, media trained for the purposes of dealing with criticisms based on a failure by the media to appreciate the constraints under which the judge was working”

Lord Chief Justice, House of Lords Select Committee on the Constitution on 15th December 2010

In the courts/tribunals

Misreporting

Judicial office-holders who are factually misreported are sometimes unsure how to redress the situation. Should you need advice the Judicial Press Office can assist you, 24 hours a day, seven days a week.

Remember, speed of response is essential. This means hours – minutes even – rather than days. The national media might not be at the hearing, but stories by reporters working for local news agencies can make national headlines *within the hour*.

If the Judicial Press Office, on your behalf, is going to convince news agencies, broadcasters and editors that they have got it wrong, it needs documentary evidence – ideally a transcript or dictated notes. Understandably, the media strongly resist making corrections unless they can be shown concrete proof of their mistake.

If you are seriously misreported, it is recommended that you immediately inform your Bench Chair, Chamber President, Presiding Judge, the Chief Magistrate or Head of Division and your court or tribunal manager.

Sometimes the judicial press officers will be first to know about a judicial office-holder's potentially news-making statement in court, because a reporter will ring them for comment or they will spot a story while monitoring news wires. They will never express a view but immediately alert the judicial office-holder or their court manager to the query.

Even if you do not want the Judicial Press Office to issue a statement on your behalf, it would appreciate being advised of the course of action you intend to take. It puts them in the picture and helps them to deal with the inevitable follow-up media queries (such as interview bids) in a positive way.

Suggested courses of action

Pre-emptive (see also section on dealing with exceptional cases)

Where your sentence, decision or sentencing remarks are likely to be controversial or high-profile, they could be misinterpreted or turned into a negative story by reporters. You might wish to consider the following courses of action:

- Write out sentencing remarks/decision summary: you might wish to adjourn the case briefly to give yourself time to write out your sentencing remarks/decision summary. You should arrange for copies of your remarks to be given to HMCTS staff to distribute to reporters in court, and to fax or email to the Judicial Press Office (020 7947 6544): in both cases, immediately after sentence is passed; or
- Provide a transcript: if it is impracticable to adjourn, or to provide written sentencing remarks, it might be possible for an HMCTS official to prepare a typed copy of your sentencing remarks as soon as possible after delivery (ideally within 30 minutes). Copies of this should be made available to journalists in court and a copy faxed or emailed to the Judicial Press Office.

In each case, it is recommended you advise reporters in court or at the tribunal hearing and the Judicial Press Office of your intentions. This will help journalists to report your remarks correctly and in context, and experience shows they will be able to concentrate much more on what you are actually saying.

With advance warning and a transcript of the sentencing remarks, press officers are well placed to correct any misreporting. They can issue a statement quickly to the Press Association (the major national news agency) and national media newsdesks. When necessary, the Judicial Press Office can phone news editors or media legal departments to try to correct inaccuracies.

Reactive

If you have been seriously misreported you can ask the Judicial Press Office to issue a statement to the media on your behalf.

Such a statement must necessarily keep strictly to factual matters and not contain presumptions, or statements that cannot be substantiated.

Dealing with exceptional cases

Sometimes it may be appropriate for a judge to issue a statement supplied to the media by the Press Office but normally intended for wider public consumption.

Making planned statements in open court

Courts and most tribunals operate in public, and any comment made by a judicial office-holder in public session is regarded as open to reporting. This extends to comments made when there's no reporter in the room, as long as someone has repeated it to them.

Judges may occasionally read out statements in open court, for example commenting on misreporting of a case. These can be issued to the wider media by the Press Office.

In all such circumstances judicial office-holders are strongly advised to consult with their Bench Chair, Chamber President, Resident Judge, the Chief Magistrate and/or Presiding Judge before making a statement. You may also find it helpful to talk to the Judicial Press Office – it will be able to look at a draft from a lay perspective, and point out how the media might receive or interpret it.

There is no question of Judicial Press Office staff attempting to tell a judicial office-holder which words they should be using, but we can provide a sounding board.

Preparing sentencing remarks/decisions

Increasingly the senior judiciary are issuing written sentencing remarks/decision summaries. This is particularly common and useful in cases that are likely to be controversial and are high-profile. Providing these makes it much more likely that the media will report a decision accurately, and that they will use a judicial office-holder's own language (normally more measured than the interpretation/selective quoting that can occur).

Similarly some judges have produced summaries of their judgments to assist journalists who increasingly have to report on them almost instantly.

Judicial Press Office staff are very happy to be used as sounding boards on drafts, with all sentencing remarks and judgments being treated in complete confidence.

Issuing statements to the media

This is undertaken for judicial office-holders by the Judicial Press Office (see *Misreporting*, p6).

Occasionally the statement will come from the Judicial Press Office or a senior judicial office-holder, where the aim is to try and depersonalise an issue, such as when an individual is being fiercely condemned for in fact making a routine decision to which there is no alternative.

Reporting restrictions

A fundamental principle of justice is that it is conducted in public, and in many cases the media play an important role in reporting proceedings to the public and representing that public interest.

Of course there are other aspects of justice, for example family cases, or detention under the Mental Health Act, where the current presumption is for hearings to be heard in full or part in private.

There are a variety of reporting restrictions that apply automatically – or at a judicial office-holder’s discretion – in a range of proceedings. These are set in statute or occasionally case law. A judicial office-holder will sometimes have to achieve a difficult balance between the desire for openness and pressures to protect the interests or security of parties. This Guide does not dwell on specific restrictions, but focuses on the general principles.

The Judicial College, in collaboration with the Society of Editors, has published two helpful guides:

Reporting Restrictions in the Criminal Courts:
http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/crown_court_reporting_restrictions_021009.pdf

The Family Courts: <http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/family-courts-media-july2011.pdf>

The media are of course bound by the law and by their codes of practice on what information they can use about proceedings, even where they have access to it.

The court or tribunal should exercise the utmost care before making an order to restrict reporting – it has to ensure it has the power to make the order and that the order is necessary. It should also be prepared to listen to representations from the media when they consider that restrictions are unwarranted or make sensible reporting difficult. The court or tribunal

should explain its decision clearly, and ensure the order is correctly drawn up and brought to the attention of the media.

Where you have made an anonymity order you should say so and give the reasons in any written determination that you hand down.

Local court procedures may vary, but it will normally be the case that HMCTS staff prepare the appropriate notice following an order for reporting restrictions. The notice should always be agreed with the judicial office holder who made the order, before being signed by the HMCTS manager or nominated deputy.

Every care should be taken for notices to be displayed clearly at the court/hearing room door, by the daily lists and in a press room (if available), and by drawing them to the attention of reporters. They can also be mentioned on courts with Xhibit screens (‘reporting restrictions apply in this case’). Orders made in high-profile cases should also be passed to the national media – the Judicial Press Office can assist with this.

It is important that any amendments or additions to reporting restrictions are handled in exactly the same manner.

Identification of Magistrates, Tribunal judges and members

The position in common law is clear – it would be considered inimical to the administration of justice to protect the identity of Tribunal Judges and Tribunal Members presiding over hearings.

In relation to magistrates this was established in the cases *R v Felixstowe Justices ex p Leigh* (1987) and *R v Evesham Justices ex p McDonagh* (1988).

Whilst there is an expectation that first names and surnames will be released, the media are asked to make it clear that Tribunal panels and magistrates

make collective decisions not individual ones. If one person is to be quoted it should be as “John Smith, speaking on behalf of the panel, said...”

In situations where identity is being made a major

issue in terms that intrude on privacy and/or security, assistance can be sought from the Chamber/Tribunal President, Hearing Centre Manager, Bench Chair, the Chief Magistrate, Justices’ clerk or Judicial Press Office.

Filming/Photography and Recording in Courts and Tribunals

In September 2011, the Lord Chancellor announced his intention to change the law to allow cameras in court as a way of increasing public confidence in the justice system. The Lord Chief Justice has appointed Lord Justice Gross to lead on discussions with the Ministry of Justice, HMCTS and the broadcast media in preparation to a change in the law.

It is intended that broadcasting will initially be allowed only from the Court of Appeal (Civil and Criminal), but the Lord Chancellor has said he will look to expand this to the Crown Court eventually.

In the meantime, the law remains the same and for ease of reference, this section just sets out the terms of the current law prohibiting the taking of photographs (including film/television) in court and, by analogy, tribunals.

Section 41 of the Criminal Justice Act 1925, which applies to England and Wales, prohibits the taking of photographs or making of sketches in or around a court and prohibits publication of any such photograph or sketch.

Generally this has not precluded photographs taken at court open days (as these are recognisably not live proceedings); although judicial office-holders should take care not to be photographed alone on the bench.

Mobile or smart ‘phones tend to have the ability to record sound and take photographs or film. There have been several examples of men and women being convicted of contempt of court for taking photographs on mobile phones during trials.

These ‘phones are increasingly used by journalists to file copy or blog on court proceedings and this type of activity is permitted, unless a judge directs otherwise, under the Lord Chief Justice’s Practice Guidance on live text-based communications from court in December 2011 (see:

<http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/lbbc-guidance-dec-2011.pdf>).

The Contempt of Court Act probably applies to all tribunals that exercise court-like functions, although the ambit of the Act is not settled and not all tribunals may be covered. If in doubt consult your Chamber President.

Sound recording in court

Section 9(1) of the Contempt of Court Act 1981 (which applies to England, Wales and Northern Ireland) prohibits the recording of sounds, except with the leave of the court. Section 9(2) of the Act provides that it is a contempt of court to broadcast recordings of court proceedings to the public.

[Smart] ‘phones are increasingly used by journalists to file copy or blog on court proceedings and this type of activity is permitted, unless a judge directs otherwise, under the Lord Chief Justice’s Practice Guidance on live text-based communications from court in December 2011

Media use of "Live Note" transcripts at High-Profile trials

The senior judiciary and ministers approved a protocol for broadcasters to purchase or take a feed from the live note or real-time stenographic transcription of high profile court proceedings (not including magistrates' courts). The protocol is included in the Crown Court manual (Section 20, Appendix C), which includes provisions such as no

feed being provided when the jury is not present in court.

The procedure is that the broadcaster seeking a live feed will request consent of the trial judge, who will decide whether to grant the request and whether any conditions over and above normal reporting restrictions should apply. The administrative arrangements are looked after by court staff.

To date the procedure has only been used in a small number of cases.

Out of court/tribunals

Doorstepping

The situation where reporters call out questions to you as you enter or leave a building or car is known as 'doorstepping'. This can often be anticipated, but will normally occur at very short notice.

A judicial office-holder who becomes the focus of media attention, usually because of a decision or comments made in court, can be doorstepped by a group of reporters and photographers outside a court or at the tribunal hearing, or at home. It can be an unpleasant and unnerving experience.

However daunting it may seem, it is in reality only a few reporters or photographers trying to do their job, or get a picture for their newspaper, or a sound-bite

for the TV or radio news.

This might be cold comfort, but an understanding of why doorstepping occurs places you in a stronger position.

Be prepared

If you think you might be doorstepped, it is recommended you prepare a stock answer such as: "I'm sorry but I'm unable to discuss this matter outside the court/tribunal" or, if asked a question about a case, "I have said everything I intend to say about the case in court/tribunal, and have nothing further to add" – and politely stick to it.

Doorstepping – general advice

Do

- stay calm and be polite.
- if you are caught outside a building, walk on in a purposeful manner.
- if you find yourself the centre of a media scrum - stop walking momentarily. You will find that the reporters and photographers will naturally back off to give you space. Having established a degree of control, continue on.
- always look friendly and use your prepared stock answer - even if it is only "Good morning".
- look at the reporters (not at the cameras).

Don't

- make a dash for your car, or retreat into the building.
- go in search of HMCTS staff or a police officer - unless you genuinely feel physically threatened.
- let the reporters or photographers think they have surprised or are upsetting you.
- put your hand over the lens of a camera.
- hide your face, eg with a briefcase or a newspaper.
- say "No comment!"
- and, as much as you may like to, don't brusquely tell them to go away.

Two further options are:

- say nothing at all – the easiest course of action, but it may create an unnecessary impression of arrogance;
- respond to all questions as best you can – this course is fraught with pitfalls, given that the subject matter will normally be related to a case.

In some (rare) instances you may consider offering the reporters an opportunity to record a brief, prepared (written) statement and to photograph you outside the court/tribunal or your home – on the understanding they will then leave.

If you wish to take this option, you can ask the Judicial Press Office to broker an arrangement on your behalf. The press officers can contact the newsdesks of the media involved to arrange a suitable time and place, and can also advise newsdesks that you do not wish to make a statement, and that there is no point in their reporters/photographers waiting at your home.

If doorstepped at home

In the unlikely event that you and your family are ‘besieged’ by reporters or photographers outside your house:

- follow the advice given above
- try not to let them draw your family into the situation.

You should be aware, however, that friends, neighbours, even local publicans or shopkeepers who know you, may get asked for information. If you feel it is likely they could be contacted by the media it might be worth warning selected people and giving them a simple ‘line to take’.

Be wary if you are asked for family photographs. It is recommended that you decline any such requests.

Security

Within the constraints laid down by the Press

Complaints Commission (PCC’s) Code of Practice and the equivalent codes used by broadcasters, the media may also legitimately photograph and film your car and home from a public thoroughfare.

If you are concerned that your car number plate may be clearly seen or the whereabouts of your home clearly identified on a news broadcast or in a published photograph, the Judicial Press Office can ask the relevant media organisation to blank it out in time for the next transmission or edition. The Judicial Press Office’s experience is that television newsdesks and newspapers normally cooperate with such requests.

The PCC’s Code of Practice states that, unless their enquiries are in the public interest, journalists should not:

- photograph individuals on private property, such as a garden, without their consent;
- persist in telephoning or questioning individuals after having been asked to stop;
- remain on an individual’s property after having been asked to leave; and
- nor should they follow an individual.

Not all matters which interest the public are in the public interest. Even when personal matters become the proper subject of enquiry, people in the public eye or their immediate family or friends do not forfeit the right to privacy, though there may be occasions where private behaviour raises broader public issues either through the nature of the behaviour itself or by the consequences of it becoming widely known.

But any information broadcast should be significant to the story as well as true. The location of a person’s home or family should not normally be revealed unless strictly relevant to the behaviour under investigation. This is particularly true for the judiciary, because of the security dimension of a judicial office-holder’s home address being revealed publicly.

In addition to its Code of Practice, the PCC also issued a guidance note to the print media specifically on the judiciary and harassment. This reminded editors of the convention that judges do not comment outside a courtroom or hearing room on

cases over which they have presided, including discussion of a sentence.

It is reproduced here:

The Judiciary and harassment

Editors may be aware of the convention that dictates that judges cannot comment outside a courtroom on any case over which they are presiding, or have presided, or discuss any decision they have made, or any sentence they have imposed. They are equally prohibited from commenting on or discussing the decisions of other judges.

The Commission would like to highlight to editors that, as there are no circumstances in which judges can speak

to the press about such matters, approaches to judges, or members of their family, by reporters for comments about a judge's involvement in a case may lead to a breach of Clause 4 (Harassment) of the Code. The relevant part of Clause 4 says that "journalists ... must not persist in telephoning, questioning, pursuing or photographing individuals having been asked to desist; must not remain on their property after having been asked to leave and must not follow them".

Editors should ensure that their own staff are aware of the protocol which prevents judges from discussing cases that they have tried and of the issues this raises under the Code. Editors must also, of course, satisfy themselves that material based on an approach to a judge and supplied by freelancers or news agencies has been obtained in accordance with the Code.

Interviews

Judicial office-holders are often experts in particular aspects of the law or in related matters such as witness protection, dealing with child witnesses, or the use of IT in courts. As such, they are often regarded by journalists as people who can offer a useful, objective point of view and so are often asked to give interviews or take part in media discussions on topical issues.

If you are approached directly by the media you should refer the journalist to the Judicial Press Office.

In line with the advice from the Lord Chief Justice and Senior President of Tribunals, the presumption is that any interview bid would be declined and certainly no interview should take place without the advice of your Head of Division/Chamber President/Bench Chair/the Chief Magistrate and the Judicial Press Office and Lord Chief Justice/Senior President of Tribunals/Senior Presiding Judge being aware first.

There may be occasions when the senior judiciary feels it is appropriate for a member of the judiciary to give an interview in response, for example, to a particular report or to explain the role of judicial office-holders in a case.

The Judicial Press Office will liaise with the relevant members of the senior judiciary to consider each interview bid on a case by case basis. The Press Office may refer the request back to a particular judge, a member of the Judicial Media Panel or another judicial office-holder with a view to them doing the interview.

We recognise that some members of the judiciary, especially magistrates and tribunal members or those who do not work full-time as a judge, often have other roles within their profession or local community.

If you are taking part in media interviews or television programmes as a result of one of these roles you should ensure you are not going to be described by your judicial role in advance. When deciding whether to take part you should also consider whether doing so could bring the judiciary into disrepute, even if you are not described as a member of the judiciary.

The Judicial Press Office can provide advice and training, if necessary, to any judicial office holder who it asks to participate in an interview.

Speeches

If you are making a speech that may be of interest to the media (either from the nationals or the specialist legal press eg Law Society Gazette), perhaps because it is on a topical issue or at a high profile event, you should try to let the Judicial Press Office know in advance, as well as your Bench Chair, Chamber President, the Chief Magistrate, Presiding Judge or

Head of Division. You may find it is advisable to ask a colleague to read your draft in advance. The Judicial Press Office can arrange for the Corporate Communications Team to publish appropriate speeches on the judiciary's website and issue copies to key journalists.

Letters to newspapers

From time to time some members of the judiciary have had letters to editors published. If writing a letter for publication you should consider whether it is appropriate to include any reference to your judicial position. If you do you should take care to

ensure you are not seen to be commenting on a particular case or a politically sensitive issue.

You may wish to let a colleague read your draft before submitting for publication.

Parliamentary Select Committees

Judges or magistrates invited to attend a Parliamentary Select Committee should consult Beatson J's guidance:
http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/select_committee_guidance0708.pdf

For the purposes of this guide, we need only dwell on some media issues arising out of Select Committee evidence.

On *written evidence*, whilst the Committee will not necessarily choose to make all of the written evidence they receive publicly available, it is sensible to proceed on the basis that they will. Therefore a judicial office-holder submitting evidence should accept that his/her views may be aired in public and subject to public comment.

On *oral evidence*, the media attend Committees and can also access their proceedings online, so again judicial office-holders should be aware that they are commenting in a public forum, and their evidence may be subject to comment by the media, politicians and others. For example if a judge is critical of the Government's handling of a particular issue.

At times, a judicial office-holder will want to prepare an opening statement to the Committee, to set out their views in some detail. These statements can be made available to the media by the Judicial Press Office, to help ensure a judge's comments are accurately reported and in their proper context.

It is advisable for prepared statements to be discussed in advance with the Presiding Judge/Head of Division/Chamber President/Bench Chair/justices' clerk/the Chief Magistrate and the Judicial Press Office.

Libel

Media criticism of judicial office-holders – however harsh or misconceived – is a fact of life.

Even in the 1930s Lord Atkin of Aberdovey, a Lord of Appeal in Ordinary, was able to surmise that justice “is not a cloistered virtue”; today, even more so, magistrates and judges operate in the public eye and must expect to be subject to comment and scrutiny in the media.

And if this comment is sometimes not wholly fair or accurate, it should, nevertheless, be seen as an unavoidable reflection of the judicial role in contemporary society.

In normal circumstances, if you believe you have been unfairly criticised in the media or elsewhere, your appropriate recourse – if any – will be to seek the publication or broadcast of a correction and/or an apology. The Judicial Press Office will always be happy to assist you in doing so.

If that is not forthcoming, where the media are concerned you can refer the matter to the Press Complaints Commission or Ofcom/the BBC.

First step to obtain redress

If you believe you have been libelled – before or in lieu of entering into litigation – we recommend you should first try to obtain:

- a retraction; and/or
- an apology; and
- the removal of the offending article from media paper and electronic ‘cuttings’ libraries.

There are several ways of proceeding, especially if you have been misreported (see the section in this Guide headed *Misreporting*). The key thing is to take action as quickly as possible.

Involving your solicitor

In extreme cases you may wish to discuss the matter with your solicitor who could consider the following points:

- what steps might be taken through media organisations’ legal departments.
- ensure that the offending organisation acts immediately to notify the owner of any computerised databank licensed to hold the material (world-wide) for retrieval by subscribers – and that each be required to ensure:
 - the erroneous material is withdrawn and any agreed correction is incorporated into the relevant databank;
 - a suitably worded cross-reference to the withdrawal/ correction appears alongside the article in question, drawing attention to the existence and location of the withdrawal/correction; and
 - the withdrawal/ correction to be incorporated in the organisation’s own cutting folders (both manual and electronic) or film libraries – again with a suitably worded cross-reference.

Taking legal action: points to consider

In certain circumstances, having weighed up these considerations, you may feel that the media comments are so damaging and unfair to you personally and/or to the judiciary collectively that you do want to initiate proceedings for libel.

If so, you need to take account of the following:

- the nature, tone and content of the comments in question and whether legal action would

- be commensurate with the damage caused or seen to be caused by them;
- any implications for the reputation and standing of the judiciary collectively, as well as for yourself, of the comments in question or the lack of any legal challenge to them;
- the risk that libel actions keep words that might otherwise have been forgotten in the public mind long after the original event;
- the view that it may not always be compatible with the status and dignity of judicial office for a judge to initiate legal proceedings, however provocative the comments made by the media; and
- the likelihood of a successful action.

It is recommended that the possibility of a libel action should be regarded as a matter of last resort. Moreover, before taking particular steps regarding action, you should inform your Presiding Judge/Head of Division/Chamber President/Bench Chairman/the Chief Magistrate and court legal team about any defamation or indeed other proceedings that you intend to institute that may bring your judicial function into public scrutiny.

The Judicial Press Office cannot give legal advice on libel.

Useful links

Judicial guidance

Guide to Judicial Conduct (August 2011):

<http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guide-judicial-conduct-aug2011.pdf>

The Family Courts: Media Access & Reporting (July 2011):

<http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/family-courts-media-july2011.pdf>

Practice Guidance: The Use of Live Text-Based Forms of Communication (including Twitter) from Court for the Purposes of Fair and Accurate Reporting (December 2011):

<http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/ltbc-guidance-dec-2011.pdf>

Reporting Restrictions in the Criminal Courts (October 2009):

http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/crown_court_reporting_restrictions_021009.pdf

External guidance

ACPO/CPS Protocol for working together: Chief Police Officers, Chief Crown Prosecutors and the Media:

<http://www.cps.gov.uk/publications/agencies/mediaprotocol.html#a02>

BBC Editorial Guidelines:

<http://www.bbc.co.uk/guidelines/editorialguidelines/>

Press Complaints Commission's Editors' Code of Practice:

<http://www.pcc.org.uk/cop/practice.html>

Ofcom Broadcasting Code Guidance:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/programme-guidance/bguidance/>