

United Kingdom Supreme Court



Guide to Conduct for Members of the Supplementary Panel

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**Foreword by The Rt Hon Lord Reed
President of the UK Supreme Court**

The Court has a Guide to Judicial Conduct that sets out the standards of ethical conduct to be expected of the Court. The Guide provides guidance to the members of the Court and informs those who use the Court of the standards that they can expect of its judges. It also explains to the public how judges behave and should help to secure their respect and support. However, the Guide does not apply to retired members of the Court, or other retired senior judges, who may be invited to sit on the Court from time to time as members of its supplementary panel. This guide therefore supplements the Guide to Judicial Conduct by explaining the standards of conduct to be expected of members of the supplementary panel.

GUIDE TO CONDUCT FOR MEMBERS OF THE SUPPLEMENTARY PANEL

INTRODUCTION

1. Under the Constitutional Reform Act 2005 (the “CRA 2005”), retired Justices of the Supreme Court and senior territorial judges¹ can, with the approval of the President of the Court, be appointed to the Supplementary Panel, on which they then remain (unless they choose to resign) for five years or until they reach the age of 75, whichever is the earlier. Members of the Panel are not full-time judges, and they properly engage in a wide range of other activities. They can however act as judges of the Court at the request of the President and form a reserve which the President can call on when the need arises. There is no provision under the CRA 2005 for the removal of members from the Panel. Members of the Panel are not subject to the Court’s Guide to Judicial Conduct (the “UKSC Conduct Guide”)² or to its Judicial Complaints Procedure.
2. It is important that the standards of conduct to be expected of Panel members, as well as Justices, should be publicly explained. Much of the guidance set out in the UKSC Conduct Guide is as relevant to members of the Panel as it is to Justices, particularly in the event that a Panel member is invited to sit on an appeal. There are, however, differences between Panel members and Justices which render some of the guidance in the UKSC Conduct Guide inapplicable: for example, Panel members are free to undertake other remunerated work, whereas full-time Justices are not.

INDEPENDENCE, IMPARTIALITY, INTEGRITY AND PROPRIETY

3. Panel members should look to the UKSC Conduct Guide as a source of guidance, together with this additional guidance.
4. Retired Justices of the Supreme Court have accepted appointment as arbitrators, conducted inquiries, sat as judges of foreign courts, given speeches to commercial or trade promotion

¹ A senior territorial judge is a judge of the Court of Appeal in England and Wales, a member of the First or Second Division of the Inner House of the Court of Session, or a judge of the Court of Appeal in Northern Ireland: s 38(8): [s. 38 Acting judges | Westlaw UK](#).

² <https://www.supremecourt.uk/docs/guide-to-judicial-conduct.pdf>. The JCPC also has a Judicial Conduct Guide, which is in the same terms as the UKSC Conduct Guide: <https://www.jcpc.uk/docs/guide-to-judicial-conduct.pdf>.

organisations, published their memoirs, participated in the work of the House of Lords, and contributed to public debate, for example by taking part in discussion panels or giving media interviews. None of these post-retirement activities necessarily runs counter to the UKSC Conduct Guide, but some of them are capable of presenting risks to public confidence in the independence and impartiality of Panel members, and in the Supreme Court generally.

5. Panel members are publicly identified as such. Their extra-judicial activities are therefore relevant to the Court's reputation for the duration of their membership of the Panel, whether or not they are ever invited to sit on a case. Panel members should therefore exercise discretion as to whether their retirement activities might compromise their independence or impartiality, actual or perceived.

PARTICIPATION BY PANEL MEMBERS IN THE BUSINESS OF THE HOUSE OF LORDS

6. Members of the House of Lords who hold a “qualifying judicial office” are disqualified from sitting or voting in the House of Lords by section 137(3) of the CRA 2005 while they hold such an office.³ The “qualifying judicial offices” for this purpose are listed in Schedule 1 to the House of Commons Disqualification Act 1975 (as amended by the CRA 2005) and include Justices of the Supreme Court and senior territorial judges.

7. Whilst it would not be appropriate to restrict membership of the Panel to persons who are not members of the House of Lords, or to require that such persons refrain from voting or sitting in the House of Lords while they are Panel members, the participation of Panel members in the work of Parliament gives rise to particular risks, real or perceived, that their independence and impartiality in the discharge of their judicial functions will be undermined by their legislative activities.

³ [s. 137 Parliamentary disqualification | Westlaw UK](#)

8. If a Panel member has been involved in the passage of legislation relevant to the determination of a case, that Panel member should disclose such involvement to the President, should he or she be invited to sit on an appeal, and should decline the invitation.

9. More broadly, the legislative activities of Panel members pose a risk to the Court's reputation where they involve a strong element of party-political controversy. It is therefore appropriate for there to be an additional undertaking for Panel members who are also members of the House of Lords, based on the 22 June 2000 statement made by Lord Bingham (as Senior Law Lord) on behalf of the Lords of Appeal in Ordinary, in which he set out the principles which they intended to observe when participating in the business of the House of Lords. The statement provided:

“As full members of the House of Lords the Lords of Appeal in Ordinary have a right to participate in the business of the House. However, mindful of their judicial role they consider themselves bound by two general principles when deciding whether to participate in a particular matter, or to vote: first, the Lords of Appeal in Ordinary do not think it appropriate to engage in matters where there is a strong element of party political controversy; and secondly the Lords of Appeal in Ordinary bear in mind that they may render themselves ineligible to sit judicially if they were to express an opinion on a matter which might later be relevant to an appeal to the House.

The Lords of Appeal in Ordinary will continue to be guided by these broad principles. They stress that it is impossible to frame rules which cover every eventuality. In the end it must be for the judgment of each individual Lord of Appeal to decide how to conduct himself in any particular situation.”⁴

UNDERTAKING

10. Prospective Panel members will be asked to provide the President with an undertaking as to their conduct which will (i) hold Panel members to high standards, equivalent to those expected of serving Justices; (ii) protect the Court's reputation; and (iii) take account of the legitimate extra-judicial activities which many Panel members undertake. The undertaking is derived from the standards applicable to serving Justices under the UKSC Conduct Guide and the UKSC Complaints Procedure. It is coupled with an undertaking to resign from the Panel if,

⁴ Reproduced in Lord Hope of Craighead, . “Law Lords in Parliament”, in *The Judicial House of Lords 1876–2009*, ed Blom-Cooper, Dickson and Drewry, at p 176.

in the President's opinion, the member's conduct throws sufficiently serious doubt on his or her fitness to serve on the Panel.

11. The undertaking makes specific provision for Panel members who are also members of the House of Lords. They will be requested to give an additional undertaking which is derived from the principles which the Lords of Appeal in Ordinary said that they would observe when participating in debates and votes in the House of Lords.

12. The undertaking is as follows:

As a condition of the President of the Supreme Court approving my membership of the Supplementary Panel under section 39(4) of the Constitutional Reform Act 2005, I undertake to the President that, for the duration of my membership of the Supplementary Panel:

- a) *I will so conduct myself, in court and out of it, as not to throw doubt on my character, integrity, or continuing fitness to serve on the Supplementary Panel, and will not engage in any activity which would compromise my independence or impartiality or the performance of my duties or functions in respect of cases on which I may be invited to sit; and*
- b) *I will resign from the Supplementary Panel in accordance with section 39(8) of the Constitutional Reform Act 2005 at the President's request if the President concludes that my conduct, in breach of my undertaking at paragraph a) above, is such that it might reasonably be thought to throw serious doubt on my continuing suitability for membership of the Supplementary Panel; and*
- c) *[applicable only in the case of a person who is invited to join the Supplementary Panel and who is a member of the House of Lords]*
 - i. *in participating in the business of the House, I will be guided by the principle that it is not appropriate for a Panel member to engage in matters where there is a strong element of party political controversy; and*
 - ii. *should I be invited to sit on a particular appeal, I will disclose to the President any aspect of my participation in the business of the House which may render me ineligible to sit judicially in that appeal.*