

**SEMINAR ORGANISED BY THE FRENCH COUNCIL OF STATE  
IN COOPERATION WITH ACA-EUROPE**

***ETHICS AND RECRUITMENT  
OF MEMBERS OF THE SUPREME ADMINISTRATIVE COURTS AND COUNCILS OF STATE***

***Questionnaire***

*The Versailles seminar will address two related topics: ethics and recruitment.*

*The first topic will be discussed on Friday morning, 29 November, in two round tables. The first will focus on the legal and institutional framework. The second, based on practical cases, will address the content of ethical rules.*

*The second topic will be addressed on Friday afternoon during the third round table.*

*Ethics for magistrates was discussed at the seminar organised by AIHJA/IASAJ in September 2020 in Athens. It was also discussed at a meeting of the European Association of Administrative Judges (AEAJ) in May 2023 focusing on the freedom of expression of magistrates. Some of the questions below repeat those asked in the Athens questionnaire. You can, of course, use the answers you provided in 2020 to respond to this questionnaire.*

## **I Ethics: Legal and institutional framework**

### **1.1. General framework**

1.1.1. Are the ethical obligations of public officials in general enshrined in your country's positive law?

Yes

No

If yes, they are enshrined (please check all applicable answers):

in the Constitution

in the law

in a regulatory text



in a Charter of Ethics or a Collection of Ethical Principles

other

Please explain if necessary:

People that work for the Civil Service (public employees that support the Government of the day in implementing its policies and delivering public services), are subject to the Civil Service Code of Conduct. Under section 5 of the Constitutional Reform and Governance Act 2010, it is a statutory requirement for the Minister for the Civil Service to publish the Code of Conduct. However, the content of the Code of Conduct is not stipulated by the statute, it is for that Minister to determine. The Code of Conduct is incorporated into the terms and conditions of service of any civil servant to which it applies. (For the avoidance of doubt, judges are not civil servants.)

1.1.2. Are the ethical obligations of members of your institution specifically enshrined in your country's positive law?

Yes

No

If yes, they are enshrined (please check all applicable answers):

in the Constitution

in the law

in a regulatory text

in a Charter of Ethics or a Collection of Ethical Principles

other

Please explain if necessary:

By statute, Justices of the UKSC are required to take the oath of allegiance and the judicial oath, which contain an ethical component (see question 1.8). However, the broader ethical obligations of Justices of the UKSC are not formally set out in the UK's positive law. The document that does set out ethical guidelines does not constitute a set of formal legal or regulatory obligations (see question 1.2.1, below).

## **1.2. Charter of Ethics**



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1.2.1. Does your institution also have a Charter of Ethics or a Collection of Ethical Principles?

Yes

No

If the answer is yes: On which date was this document adopted?

The Guide to Judicial Conduct ("**the Guide**") was prepared and adopted when the UK Supreme Court ("**UKSC**") was established in 2009. It was revised in 2019.

1.2.2. Is the adoption of this document an obligation for your institution?

Yes

No

Please explain if necessary:

The Guide was voluntarily prepared for and by the Justices of the UKSC. There was no legal obligation on them to do so.

1.2.3. Was this document adopted in response to a particular event that stirred public opinion?

Yes

No

If yes, please explain the legal and political context that led to the adoption of this text:

The Guide was first prepared when the UKSC was established in 2009, replacing the Appellate Committee of the House of Lords as the highest court in the UK. The Guide was not prompted by any particular ethical or conduct-related concern, but to coincide with this constitutional change.

1.2.4. Who drafted this document?

A working group composed exclusively of members of your jurisdiction

A working group expanded to include outside persons



- A working group involving associations of administrative judges
- Other

Please explain if necessary:

The Guide was prepared by and for the Justices of the UKSC.

1.2.5. Which authority signed and enacted this document?

- The president of your institution
- A collegiate body of your institution
- Other

Please explain if necessary:

The Guide is not signed, but was adopted by the Justices of the UKSC collectively. In 2019, it was described by the then-President of the Supreme Court as having the “approval and support of each of the Justices”.

1.2.6. Has this document undergone one or more revisions?

- Yes
- No

Please explain the purpose of these revisions if necessary:

The Guide was revised in 2019 to coincide with the tenth anniversary of the UKSC’s existence.

1.2.7. What is the legal value of this document?

- This document contains binding legal rules (hard law)
- This document contains soft law standards
- Other



Please explain if necessary:

The Guide is not legally binding. It provides guidance to Justices and informs users of the UKSC of the standards they can reasonably expect from the Justices, but is not a formal legal or regulatory text. The answers to the other questions in this document that refer to the guidelines in the Guide should be read against this background.

1.2.8. Please attach this document to your response, if possible in a French or English translation, in the form of an attached document or a web link.

<https://www.supremecourt.uk/docs/guide-to-judicial-conduct.pdf>

### **1.3. Scope of application of ethical rules:**

1.3.1. Whether a Charter of Ethics or equivalent text has been adopted or not, do the ethical rules applicable to members of your supreme court apply identically to magistrates in the lower courts of your judicial system?

Yes

Partially

No

Please explain if necessary:

The Guide applies only to the Justices of the UKSC. The UKSC is a non-ministerial government department that is administratively distinct from the rest of the UK judiciary. The judges in lower courts, in England & Wales, Northern Ireland and Scotland, are subject to their own separate ethical guidelines and codes of conduct.

1.3.2. To whom do these ethical rules apply?

To members of your institution who are active within it

To members of your institution who are temporarily not serving there, under secondment or availability arrangements, in other administrations or in the private sector

To resigning members

To retired members



To administrative staff (referendary judges, legal assistants, clerks, interns, etc.) assisting members of your institution

Other

Please explain if necessary:

N/A

1.3.3. In the event that your institution exercises both a judicial and a consultative function, do the ethical obligations imposed on members exercising one or the other of these functions differ?

Yes

No

Not applicable

Please explain if necessary:

N/A

1.3.4. If there is a duality of jurisdiction in your country distinguishing an administrative jurisdictional order and a judicial jurisdictional order, are the ethical rules applicable to magistrates of these two orders different?

Yes

Partially

No

Please explain if necessary:

There is no such duality of jurisdiction.

1.3.5. If the ethical rules are wholly or partly different for magistrates of these two orders, please indicate one or more examples of obligations that apply to magistrates of only one order or that apply differently to magistrates of each order of jurisdiction:



N/A

1.3.6. If the magistrates who make up your institution belong to several different categories (for example, a bench and a public prosecutor's office), are they subject to different ethical rules?

- Yes
- No
- Partially
- Not applicable

If these ethical rules are wholly or partly different for magistrates of different categories, please give an example.

N/A

#### **1.4. Relationship between ethical and disciplinary rules:**

Is a breach of ethical obligations necessarily an offence that may result in disciplinary action?

- Yes
- No

If not, please give an example:

The Guide does not include, and is not directly linked to, a formal disciplinary process. The Guide allocates the “primary responsibility for deciding whether a particular activity or course of conduct is appropriate rests with the individual Judge.” It also envisages scenarios in which there may be doubt and a range of reasonably held opinions on a particular issue. In cases of doubt, a Justice should seek the advice of the President or Deputy President of the UKSC.

#### **1.5. Training on ethical rules:**

Are members of your institution made aware of or trained in ethics?

- Yes
- No

If yes, how and how often?



The Justices are made aware of points of ethics by internal discussion of ethical issues as they arise at regular Justices' meetings. There is no formal training.

### **1.6. The College of Ethics**

1.6.1. Has your institution created or does it have a collegiate body or a single authority responsible for answering ethical questions that may arise for members of your institution?

Yes

No

1.6.2. If yes, how is it appointed?

There is no such collegiate body for the UK Supreme Court. As is noted under question 1.4, above, the primary responsibility for determining the appropriateness of conduct rests with the individual Justice concerned. However, paragraph 1.4 of the Guide does note that: "In cases of doubt, a Justice should seek the advice of the President or Deputy President of the Court."

1.6.3. If yes and in the case of a collegiate body, how is it composed?

N/A

1.6.4. Who can refer to this body?

A member of your institution for an ethical question concerning them

A magistrate from the lower courts for an ethical question concerning them

The president of your institution

Other members of your institution

A litigant who believes that a magistrate has disregarded their ethical obligations

This body can refer to itself

Others

Please explain if necessary:

N/A



1.6.5. Are the opinions given by this body made public?

Yes

No

1.6.6. If yes, are the published opinions anonymised?

Yes

No

1.6.7. Can these opinions be challenged before the court?

Yes

No

Please explain the legal scope of these opinions:

N/A

### **1.7. Declaration of interests**

1.7.1. Must members of your institution complete a declaration of interests?

Yes

No

If yes, please briefly describe the modalities of its submission:

N/A

1.7.2. Is there a specific procedure or *ad hoc* body responsible for examining conflicts of interest that may arise when a member of your institution leaves for the private sector?

No.

### **1.8. The oath**

Do members of your institution have to take an oath?

Yes



No

If yes, what does this oath consist of and how is it taken?

Two oaths are taken by Justices on appointment: an oath of allegiance to the monarch and a judicial oath. Both oaths are taken orally by the Justice with their hand on a holy book of their religion, or can be given as an affirmation. The precise wording can vary with the Justice's religion, or where an affirmation is given. The Christian oaths are:

"I, [Name], do swear by Almighty God that I will be faithful and bear true allegiance to His Majesty King Charles the Third, his heirs and successors, according to law."

"I, [Name], do swear by Almighty God that I will well and truly serve our Sovereign King Charles the Third in the office of a Justice of the Supreme Court of the United Kingdom, and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will."

## II Ethics: Content of rules

### 2. 1. Independence, impartiality and prevention of conflicts of interest

2.1.1. In which circumstances should a member of your institution abstain from sitting or risk being disqualified from a judgement panel?

- In cases of familial ties that may link the magistrate with a party
- In cases of friendly ties that may link the magistrate with a party
- Due to previous functions performed by the magistrate
- Other

Please explain, citing any relevant jurisprudential examples

The test for determining whether a judge should recuse themselves from a case is established in case law. In most cases, the relevant test will be the test for apparent bias. The question which must be asked is whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased (*Porter v Magill* [2001] UKHL 67). This principle has been held to be in harmony with the jurisprudence of the European Court of Human Rights on the right to an independent and impartial tribunal under article 6 ECHR.

It is this question which determines the question of whether a judge should recuse themselves.

Case law provides further guidance on this question. In *Locabail (UK) Ltd v Bayfield Properties Ltd* [2000] QB 451, the Court of Appeal gave guidance on circumstances would be likely and unlikely to give rise to a real risk of bias at paragraph 25:



*“It would be dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided. We cannot, however, conceive of circumstances in which an objection could be soundly based on the religion, ethnic or national origin, gender, age, class, means or sexual orientation of the judge. Nor, at any rate ordinarily, could an objection be soundly based on the judge's social or educational or service or employment background or history, nor that of any member of the judge's family; or previous political associations; or membership of social or sporting or charitable bodies; or Masonic associations; or previous judicial decisions; or extra-curricular utterances (whether in textbooks, lectures, speeches, articles, interviews, reports or responses to consultation papers); or previous receipt of instructions to act for or against any party, solicitor or advocate engaged in a case before him; or membership of the same Inn, circuit, local Law Society or chambers ... By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind...; or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him. The mere fact that a judge, earlier in the same case or in a previous case, had commented adversely on a party or witness, or found the evidence of a party or witness to be unreliable, would not without more found a sustainable objection. In most cases, we think, the answer, one way or the other, will be obvious. But if in any case there is real ground for doubt, that doubt should be resolved in favour of recusal. We repeat: every application must be decided on the facts and circumstances of the individual case. The greater the passage of time between the event relied on as showing a danger of bias and the case in which the objection is raised, the weaker (other things being equal) the objection will be.”*

In *Stubbs v The Queen* [2018] UKPC 30, the Judicial Committee of the Privy Council gave guidance about the appearance of bias in cases where a judge has been involved in earlier stages of the proceedings. It held that the Court of Appeal of the Bahamas was wrong to refuse a recusal application in a criminal appeal where one of appeal judges had presided over an earlier criminal trial of the appellants for the same crime which had been aborted. In that trial, the judge had made rulings on intermediate issues that were essentially the same issues which fell to be considered by the Court of Appeal. The Board concluded that the proximity of those issues to the arguments advanced by the parties in the appeal was a particularly important consideration.

The Guide to Judicial Conduct also provides some guidance about how judges should approach the question of whether they should recuse themselves from a case.

Paragraph 3.9 of the Guide states that: “A Justice will not sit in a case where: (i) he or she has a close family relationship with a party or with the spouse or domestic partner of a party; (ii) his or



*her spouse or domestic partner was a judge in a court below; (iii) he or she has a close family relationship with an advocate appearing before the Supreme Court.”*

Paragraph 3.12 of the Guide adds that: *“A Justice will not sit in a case in which he or she or, to his or her knowledge, a member of his or her family has any significant financial interest in the outcome of the case. 'Family' for this purpose means spouse, domestic partner or other person in a close personal relationship with the Justice; son, son-in-law, daughter, daughter-in-law; and anyone else who is a companion or employee living in the Justice's household. It is for the Justices to inform himself or herself about his or her personal financial and fiduciary interests and to take reasonable steps to be informed about the interests of members of his or her family.”*

Paragraph 3.10 sets out a non-exhaustive list of “sufficient reasons” for not sitting on a case, including: *“(i) personal friendship with, or personal animosity towards, a party; friendship is to be distinguished from acquaintance, which may or may not be a sufficient reason depending upon its nature and extent; (ii) current or recent business association with a party; this includes the Justice's own solicitor, accountant, doctor, dentist or other professional adviser; it does not normally include the Justice's insurance company, bank or a local authority to which he or she pays council tax.”*

Conversely, paragraph 3.11 sets out a non-exhaustive list of reasons that are “unlikely to be sufficient for a Justice not to sit on a case, but will depend upon the circumstances”, including: *“(i) friendship or past professional association with counsel or solicitors acting for a party; (ii) the fact that a relative of the Justice is a partner in, or employee of, a firm of solicitors or other professional advisers involved in a case; much will depend upon the extent to which that relative is involved in or affected by the result in the case; (iii) past professional association with a party as a client; much will depend upon how prolonged, close, or recent that association was.”*

2.1.2. If your institution exercises both a jurisdictional function and an advisory function, what individual measures does it implement to comply with the *Procola* case law of the European Court of Human Rights dated 28 September 1995, according to which the fact that certain members successively exercise, regarding the same decisions, advisory and jurisdictional functions is likely to compromise the structural impartiality of the institution?

- Prohibition of a member's participation in the judgement of an appeal directed against an act taken after advisory opinion from your institution if they participated in the deliberation of that opinion
- Prohibition for members of a judgement panel to consult the files of advisory panels
- Other

Please explain if necessary:

Our institution does not exercise an advisory function.



2.1.3. If your country allows members of your institution to temporarily leave to take up other functions in the public or private sector, what ethical rules govern such a departure and, when the time comes, such a return?

- Obligation to abstain, before departure, from participating in any deliberation involving a future employer from the moment the individual enters into negotiations with them
- Prohibition for the members concerned, during this temporary period outside the institution, from intervening in cases they became aware of in the exercise of their jurisdictional activities
- Prohibition for a member practising as a lawyer from submitting requests and briefs and appearing in court before your institution for a specified period
- Obligation to abstain, if applicable for a specified period after the return, from participating in the judgement of disputes concerning decisions taken by the authority with which the member previously served
- Other

Please explain if necessary:

Our institution does not permit members to temporarily leave to take up other functions.

2.1.4. Can a member of your institution receive gifts?

- Yes
- Yes, under certain conditions
- No

Please explain if necessary:

Justices should exercise caution when considering whether to accept any gift or hospitality, and be particularly wary of accepting any gift or hospitality that might appear to relate to their judicial office or be construed as an attempt to attract judicial goodwill or favour (paragraph 5.14 of the Guide). Further, paragraph 5.15 of the Guide states: *“Although Justices cannot be remunerated for giving talks or lectures or participating in events, the acceptance of a gift or hospitality of modest value, as a token of appreciation, may be unobjectionable, depending on the circumstances. For example, a Justice who makes a speech or takes part in some public or private function should feel free to accept a small token of appreciation; this may include a contribution to charity.”*

2.1.5. Can a member of your institution receive an honorary decoration from their country or a foreign country?



Yes

Yes, under certain conditions

No

Please explain if necessary:

By Royal Warrant, all Justices of the Supreme Court are granted the judicial courtesy title of Lord or Lady. They are all also granted the title "The Right Honourable" upon their appointment by His Majesty to the Judicial Committee of the Privy Council, which acts as a final court of appeal for many Commonwealth countries as well as the United Kingdom's overseas territories.

In general, UK citizens may only accept a decoration from a foreign state with permission of His Majesty the King.

## **2.2. Exercise of individual liberties**

2.2.1. Are there limits placed on the freedom of expression and opinion of members of your institution?

Yes

No

Please explain if necessary:

The Guide sets out the core principles which justices must observe (independence, impartiality, integrity, propriety, equality and competence) and judges should refrain from expressing themselves in ways which would compromise those principles. The Guide gives some examples of contexts where the judges should take care to avoid certain forms of public, for example where this could affect perceptions of the court's impartiality. These are discussed in more detail in the answers to the questions below.

2.2.2. In particular, is the use of social media by members of your institution regulated?

Yes

No

Please explain if necessary:

There are no formal regulations on the use of social media by Justices. However, paragraph 5.20 of the Guide does address the online presence of, and social media use by, Justices: "*Justices are aware that their extra-judicial activities include their online presence; they will bear in mind that online discussions are not private, that comments may be copied and have an unintended readership and longevity; and that it is increasingly easy to piece together information on a Justice*



*from a variety of sources. They will be wary of publishing online any more personal information than is necessary and will exercise extreme caution in discussing both judicial and personal matters. This includes their participation in social media."*

2.2.3. As an example, can a member of your institution participate in a public debate of general scope (for example, on immigration or euthanasia), provided that they do not specifically mention a particular case they may have been involved in judging?

Yes

Yes, under certain conditions

No

Please explain if necessary:

It would not generally be considered appropriate for a Justice to participate in such a debate. The Guide states that: *"Each Justice will strive to 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 individual Justice and of the Court."* It further states that: *"Each Justice will seek to avoid extra-judicial activities that are likely to cause him or her to have to refrain from sitting on a case because of a reasonable apprehension of bias or because of a conflict of interest that would arise from the activity."*

2.2.4. Can a member of your institution write and publish an article or a book? Can they teach at a public university or a private educational institution?

Yes

Yes, under certain conditions

No

Please explain if necessary:

Yes. Justices regularly give speeches and lectures, write articles and contribute to publications.

This is written into the Guide itself. Paragraph 3.4 reads: *"However, the Justices recognise that it is important for members of the Court to deliver lectures and speeches, to take part in conferences and seminars, to write and to teach and generally to contribute to debate on matters of public interest in the law, the administration of justice, and the judiciary. Their aim is to enhance professional and public understanding of the issues and of the role of the Court."*

However, paragraph 3.5 notes that: *"In making such contributions, the Justices will take care to avoid associating themselves with a particular organisation, group or cause in such a way as to give rise to a perception of partiality towards that organisation (including a set of chambers or firms of solicitors), group or cause in the conduct of their judicial duties."* In particular, Justices



*“will show appropriate caution and restraint when explaining or commenting publicly upon their decisions in individual cases.” (paragraph 2.5 of the Guide).*

2.2.5. If yes, must they seek prior authorisation from the head of your institution?

Yes

No

Please clarify if necessary:

Individual prior authorisation from the President of the UKSC is not routinely required for such activities. The general principle set out in paragraph 1.4 of the Guide applies: *“The primary responsibility for deciding whether a particular activity or course of conduct is appropriate rests with the individual Justice. The interests of justice must always be the overriding factor. There is also a range of reasonably held opinions on some points. In cases of doubt, a Justice should seek the advice of the President or Deputy President of the Court.”* Similarly, paragraph 2.3 of the Guide states: *“The Justices may consult with their colleagues when points of difficulty arise on matters of conduct. But they are solely responsible for the decisions that they take in the performance of their judicial duties.”*

2.2.6. Are members of your institution allowed to engage in political activities?

Yes

Yes, under certain conditions

No

Please explain if necessary:

Paragraph 3.3 of the Guide states: *“Each Justice will refrain from any kind of party political activity and from attendance at political gatherings or political fundraising events, or contributing to a political party, in such a way as to give the appearance of belonging to a particular political party. They will also refrain from taking part in public demonstrations which might diminish their authority as a judge or create a perception of bias in subsequent cases. They will bear in mind that political activity by a close member of a Justice's family might raise concern in a particular case about the judge's own impartiality and detachment from the political process.”*

2.2.7. Can members of your institution run for elections?

Yes

Yes, under certain conditions



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No

Please explain if necessary:

Justices should not participate in any kind of political activity (see the quotation from paragraph 3.3 of the Guide, above). This would include running for political office.

2.2.8. If a member of your institution is elected, can they continue to perform their functions in your institution?

Yes

Yes, under certain conditions

No

Please explain if necessary:

As is noted under question 2.2.6, above, Justices should not participate in any kind of political activity.

2.2.9. If a member of your institution is elected, can they, in the event of full-time elective office, rejoin your institution upon the expiration of their mandate?

Yes

Yes, under certain conditions

No

Please explain if necessary:

As is noted under question 2.2.6, above, Justices should not participate in any kind of political activity. A Justice could theoretically resign from the UKSC to stand for elected political office. This would be unusual, and we are not aware of any examples of this in modern times. However, if a Justice did so successfully, there would be no automatic right to rejoin the UK Supreme Court on expiry of the elective term. That individual could in principle be eligible for re-appointment, but would be subject to the normal selection process described under question 3.2.1 below. The relevance of any recent high-profile involvement in political life to a candidate's suitability for appointment would fall to be considered in the selection process.

2.2.10. Can a member of your institution sign a petition?

Yes



Yes, under certain conditions

No

Please explain if necessary:

It would depend on the context and the nature of the petition. However, Justices would be mindful of the importance of maintaining public confidence in the impartiality of the Court, and the parts of the Guide referenced above in 2.2.3 and 2.2.6 above which address extra-judicial activities. As previously noted, the primary responsibility for deciding whether a particular activity or course of conduct is appropriate rests with the individual Justice.

2.2.11. Can a member of your institution participate in a demonstration?

Yes

Yes, under certain conditions

No

Please explain if necessary:

It would depend on the circumstances, but it is likely that in most cases this would be inappropriate. Paragraph 3.3 of the Guide provides that Justices "*will also refrain from taking part in public demonstrations which might diminish their authority as a judge or create a perception of bias in subsequent cases.*" As previously noted, the primary responsibility for deciding whether a particular activity or course of conduct is appropriate rests with the individual Justice.

2.2.12. Can a member of your institution invoke a "conscience clause" to refuse to apply the law – for example, by refusing to sanction a doctor who, in violation of the provisions obliging him to do so, failed to inform his patients about the possibility of terminating their pregnancy?

No. There is no such "conscience clause" and a refusal to apply the law would be contrary to the judicial oath (see the response to question 1.8, above).

### **2.3. Case studies**

To add substance to our discussion, the organisers of the symposium would like to discuss specific questions that you have encountered and on which your College of Ethics, if you have one, would have pronounced.

The French Council of State proposes four questions to you, as an example:

- On impartiality: Can a consultant judge (*rapporteur public*) of the Council of State [responsible for presenting to the members of the judgement panel the case



before them, the legal issues it raises, and proposing a solution] receive a gift from a third party, not a party to the litigation, for the direction of the findings he has made in a case concerning the euthanasia of an elephant? ([Opinion no. 2013/4 of 17 June 2013](#))

- On conflicts of interest: Which cases can a head of jurisdiction assign to a magistrate whose spouse is one of the most important members of the French Government? ([Opinion no. 2017/4 of 18 September 2017](#))
- On conflicts of interest: Under what conditions can a former administrative magistrate practise as a lawyer? ([Recommendation no. 2017-1 of 15 November 2017](#))
- On the obligation of discretion and freedom to produce intellectual works: Can a judicial magistrate seconded to the Council of State, during their secondment period, publish a historical essay on the *Ranucci* case, which had caused a stir and led to one of the last capital executions in France in 1976? ([Opinion no. 2016/4 of 17 January 2017](#))

### III. Recruitment of members

#### 3.1. Who can be recruited in your institution?

##### 3.1.1. How many members do you recruit on average each year in your institution?

Vacancies at the UKSC are filled on an ad hoc basis as current Justices retire or step down. By statute, the full-time equivalent number of Justices on the UKSC is limited to 12 full-time equivalent positions. In the last five years, the number of Justices appointed each year has been: one (2023), two (2022), one (2021), four (2020) and one (2019).

##### 3.1.2. Are all new members recruited at the same rank, or are the members of your institution divided into several ranks for which different recruitment methods exist? Please explain:

There are three ranks for Justices on the UKSC. In descending order of seniority these are: the President, the Deputy President and the other Justices. As is noted in response to question 3.1.1, above, UKSC vacancies are filled on an ad hoc basis. When a Justice retires or steps down from the UKSC, a recruitment process is conducted to identify their successor as a Justice (see question 3.2.4, below).

When the President or Deputy President retires or leaves the UKSC, there are two possibilities. First, an existing Justice may take on the vacant role as President or Deputy President. The normal recruitment process would then be conducted for a Justice to fill the vacancy left by the new President or Deputy President. Second, it is possible for a candidate to be recruited to join the UKSC directly as the President or Deputy President. When this occurs, the recruitment process differs slightly (see question 3.2.4, below).

##### 3.1.3. Are age conditions set for the recruitment of these new members?

Yes

No

Please explain if necessary:

None with the exception that candidates must be below the mandatory retirement age of 75.

##### 3.1.4. Are diploma conditions set for the recruitment of these new members?

Yes

No



Please explain:

There is no diploma condition, though there are statutory professional experience requirements (see question 3.1.6, below).

3.1.5. Is it possible to become a member of your institution directly after completing university studies or, if applicable, after a training college?

Yes

No

Please explain:

There are statutory professional experience requirements (see question 3.1.6, below).

3.1.6. Are conditions of prior professional experience required to become a member of your institution?

Yes

No

Please explain:

The qualifying experience criteria for appointment as a UKSC Justice are prescribed by statute. Under section 25 of the Constitutional Reform Act 2005, there are three possible routes to qualification for appointment as a Justice of the UKSC.

First, a person is eligible for appointment if they have held "*high judicial office*" for a period of at least two years. "*High judicial office*" is defined as being a judge on the UKSC, on the High Courts or Courts of Appeal in England & Wales or Northern Ireland, or the Court of Session in Scotland.

Second, and alternatively, a person may be eligible for appointment as a Justice of the UKSC if they meet the "*judicial-appointment eligibility condition*" on a 15-year basis. This refers to being a qualified lawyer in England & Wales who has been engaged in law-related activities for that period (including legal practice, teaching or research, acting as a mediator or arbitrator, etc.).

Third, and again alternatively, a person may be eligible for appointment if they are a "*qualifying practitioner*". This refers to being either (i) an advocate in Scotland or a solicitor entitled to appear in the Court of Session and the High Court of Justiciary, or (ii) a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland.

3.1.7. Can members of the lower courts become members of your institution?

Yes



No

Please explain:

Yes. In fact, as is noted under question 3.1.6 above, one of the possible qualifying criteria for a UKSC Justice is holding “*high judicial office*”, which is defined to include positions in certain lower courts.

If yes, what is their proportion in the number of new members?

UKSC vacancies are filled on an ad hoc basis by an independent selection commission, so features of previous appointments do not necessarily predict features of future appointments. However, in recent years it has been very common for individuals appointed as UKSC Justices to have significant experience in the lower courts. 11 of the 12 current Justices have experience sitting as a full-time judge in one of the lower courts.

3.1.8. How old is the youngest of your colleagues?

60 years' old.

3.1.9. Are the members of your institution recruited without a time limit - that is, for a career that will end with retirement - or for a fixed-term contract?

Justices are recruited for a career that will end with retirement (currently mandatory at the age of 75), or otherwise on voluntary resignation. There is also a statutory mechanism by which a Justice can be removed by a resolution passed through both Houses of Parliament.

### **3.2. How does the recruitment procedure work in your institution?**

3.2.1. Does the executive branch intervene in the recruitment procedure for members of your institution?

Yes

No

Please explain:

The executive branch does have a role in the recruitment process, as is described under question 3.3.1, below. However, that role is strictly controlled by legislation and the executive does not in practice “intervene” in the recruitment process. The Lord Chancellor, a Cabinet minister, has the power to reject the independent selection commission’s selection of a candidate, or to require

the commission to reconsider its selection. The Lord Chancellor can only do so in certain circumstances, and this has never happened in relation to the appointment of a Justice.

3.2.2. Does the recruitment procedure for members of your institution involve an individual interview?

Yes

No

3.2.3. If yes, is this interview an opportunity to assess the candidate's motivation as well as their legal knowledge?

Yes

No

3.2.4. Does the recruitment procedure vary depending on the rank the candidate is applying for - in the event that recruitments in your institution may be made at different ranks (cf. above 3.1)?

Yes

No

Please explain if necessary:

Yes. Where the recruitment process is being run for the President or Deputy President, then the President or Deputy President (respectively) are prohibited from being members of the selection commission (described under question 3.3.1, below). Where the selection commission is to fill the vacancy of the role of President, the selection commission is to be chaired by one of its non-legally-qualified members.

### **3.3. What is the procedure for appointing members of your institution?**

3.3.1. The appointment of members of your institution results from a decision:

by the executive branch (for example, a presidential decree)

by the judicial branch (by the president of your institution or a panel of independent judges)

other

Please explain if necessary:



Where there is a UKSC vacancy, a statutory selection commission is convened by the Lord Chancellor. The commission (for a vacancy which is not the position of UKSC President – see question 3.2.4, above) must have at least five members including: (a) the President of the UKSC; (b) a senior UK judge who is not a UKSC judge; and (c) members from the Judicial Appointment Commissions for each of England & Wales, Scotland and Northern Ireland.

The key steps in the process are then as follows:

1. The Lord Chancellor convenes an independent selection commission whose membership is described above.
2. The vacancy is advertised. Applications are sought from a wide range of candidates, including those who are not currently full-time judges, and those who will increase the diversity of the UKSC. Applicants are invited to submit a personal statement, examples of their previous work, and details of independent assessors.
3. The Lord Chancellor, the First Minister in Scotland, the First Minister for Wales, the Northern Ireland Judicial Appointments Commission, and senior judges across the UK are consulted as part of the selection process.
4. Applicants are shortlisted based on merit and then interviewed by the selection commission.
5. The selection commission submits a report to the Lord Chancellor stating who has been selected to fill the vacancy.
6. On receiving the report, the Lord Chancellor is required to consult the First Minister in Scotland, the First Minister for Wales, the Northern Ireland Judicial Appointments Commission and senior judges.
7. Where a person has been selected under the selection process, the Lord Chancellor may accept the selection commission's recommendation, reject it, or require the selection commission to reconsider. The Lord Chancellor can only reject the selection or require the selection commission to reconsider in certain circumstances.
8. If the selection commission's recommendation is accepted, the Lord Chancellor notifies the Prime Minister of the name of the successful applicant who, in turn, notifies His Majesty The King, who makes the formal appointment of the applicant to the UKSC.
9. The Prime Minister's Office announces the appointment.

3.3.2. Can the appointment of members of your institution be challenged in court?

- Yes, through an action at the time of the appointment of said members
- Yes, as an exception regarding the regularity of the composition of the members of the judgement panel
- No

If yes, before which judge?

N/A



3.3.3. If your institution is competent to hear this litigation, how does it ensure respect for the right to a fair trial?

N/A

