**Submission of the United Kingdom of Great Britain and Northern Ireland to the call by the Special Rapporteur on the Independence of Judges and Lawyers, dated 30 October 2018.**

1. **Please provide detailed information on the constitutional, legislative and regulatory provisions on the exercise of the right to freedom of expression, the right to freedom of association, the right to peaceful assembly and the political rights of judges and prosecutors. Do these provisions expressly cover the exercise of these rights online, for instance through digital technologies such as the Internet and social media?**

The UK is party to the European Convention on Human Rights (ECHR), which requires Contracting Parties to secure to everyone within their jurisdiction certain rights and freedoms, including the right to freedom of expression (Article 10), and the right to freedom of peaceful assembly and freedom of association (Article 11). The ECHR is given further effect in UK law by the Human Rights Act 1998.

**Judges**

1. Section 3 of the Constitutional Reform Act 2005 states that: “The Lord Chancellor, other Ministers of the Crown and all with responsibility for matters relating to the judiciary or otherwise to the administration of justice must uphold the continued independence of the judiciary.”
2. In Northern Ireland, judicial independence is guaranteed in section 1 of the Justice (Northern Ireland) Act 2002.
3. In Scotland, the Scottish Ministers are required by section 1 of the Judiciary and Courts (Scotland) Act 2008 to uphold the independence of the judiciary. The Scotland Act 1998 provides that legislation passed by the Scottish Parliament is “not law” to the extent that it is incompatible with rights derived from ECHR (section 29), and the Scottish Ministers have no power to act in a manner that is incompatible with the Convention rights (section 57). The Human Rights Act stipulates that it is unlawful for a public body to act incompatibly with the Convention rights, and the actions of both the Scottish Ministers and public bodies can be challenged in the Scottish courts.[[1]](#footnote-1)
4. Guidance on judges’ relations with the media is provided by the Judicial Press Office.

**Prosecutors**

1. For prosecutors, there are some regulatory provisions under the CPS (Crown Prosecution Service) Code of Conduct (“the Code”) which would bear directly on the exercise of these freedoms as follows:

* Para 3.4 “Employees must not take part in any political or public activity which compromises or might be seen to compromise their impartial service to the Government of the day.”
* Para 12.1 “Employees must declare any situation where their impartiality, objectivity, integrity or honesty may be, or could be perceived to be, compromised due to them being related to or having a close personal relationship with someone at work. Failure to do this may result in action being taken under the disciplinary procedure.”
* Para 12.3 “Where it can be avoided, employees who are married couples, civil partners, partners, close relatives and other employees with close relationships, should not be employed in the same unit. Such relationships will need to be given consideration along with mobility rules, the duty to provide reasonable adjustments and the Employee Resourcing Policy, when posting/allocating employees in a team, particularly when in the same line management structure.”
* Para 12.5 “The CPS may transfer from any post any person whose close personal relationship to another employee is likely, in the opinion of the CPS, to prejudice discipline or to be detrimental in any way to the interests of the CPS or the public it serves while they remain in that post.”
* Para 13.2 “In considering a request to engage in any political activity, management will need to establish the employee’s actual and potential involvement and assess this against the post held. To help in this assessment there are three categories governing the type and level of involvement in any political activity whilst working for CPS. These categories are: politically free; politically restricted and intermediate. Further details, including the appeals process, can be found in the Political Activities policy and procedure.”
* Para 13.4 “Permission to participate in political activities may be withdrawn at any time and without prior notice, but giving reasons in writing, if there is a change in relevant circumstances.”
* Para 17.4 “Social networking sites, such as Facebook and MySpace, are public forums and any statements employees make on such websites are open to public viewing and scrutiny. Thus employees should ensure that any statement they make within these (and any other current or future) public forums, regardless of whether this is done in their own time and in a private capacity or not, does not contravene their obligations under this Code.”

1. In Scotland, section 48(5) of the Scotland Act 1998 ensures that the Prosecution Service is operationally independent of the Scottish Ministers. Section 3 of the Tribunals (Scotland) Act 2014 places duties on, among others, the First Minister, the Lord Advocate, Scottish Ministers and members of the Scottish Parliament, to uphold the independence of members of the Scottish Tribunals.

**Employment Law**

1. Regarding employment in the UK more generally, including for those employed as judges or lawyers, the right to freedom of association continues to be well established in UK employment law; there is no prohibition in UK law preventing Judges or Prosecutors from joining either a union or some other form of professional association. In the UK, workers are free to join a trade union and unions are free to enter into voluntary collective bargaining arrangements with employers. Where an individual employer refuses to recognise a trade union in a collective bargaining unit consisting of more than 20 workers, the union can obtain statutory recognition from the Central Arbitration Committee (CAC), so long as it can demonstrate majority support for union recognition. Workers are also free to take industrial action to defend their interests, though there are numerous statutory requirements that must be met for that action to be lawful (these are set out under Q4). Where industrial action is lawful, workers benefit from protections in UK law – dismissal in the first 12 weeks of industrial action is automatically unfair and, after 12 weeks, will also be unfair if the employer has failed to take reasonable procedural steps to resolve the dispute. Workers who are unfairly dismissed can seek compensation from the employer by lodging a case at the Employment Tribunal (ET). Unions and their members who undertake lawful industrial action are also protected from breach of contract claims from employers.
2. The Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA), contains most of the UK’s trade union law. There are specific provisions under section 174 of TULRCA that prevent discrimination against trade union membership (or non-membership) in recruitment and dismissal of employees or workers for reasons relating to trade union membership.
3. **Please provide information on cases where judges and prosecutors in your country were subject to legal or disciplinary proceedings for an alleged breach of their obligations and duties in the exercise of their fundamental freedoms, both offline and online. Please also provide information on cases where judges or prosecutors have been subject to threats, pressure, interference or reprisal in connection with, or as a result to, the exercise of their fundamental freedoms.**
4. The Lord Chief Justice (the head of the judiciary of England and Wales, responsible for representing the views of the judiciary to Parliament and the government, and for managing the affairs of the courts) and the Lord Chancellor are jointly responsible for considering and determining complaints about the personal conduct of all judges in England and Wales (and some judges who sit in Tribunals in Scotland and Northern Ireland). The Judicial Conduct Investigations Office (JCIO) is an independent statutory body, which provides advice to the Lord Chancellor and Lord Chief Justice in their joint responsibility for judicial discipline. Their statutory remit is to deal with complaints of misconduct. The JCIO will publish a statement on their website when a disciplinary sanction has been issued to a judicial office holder, following a finding of misconduct, unless the Lord Chancellor and Lord Chief Justice consider there are welfare grounds for not doing so.
5. In Northern Ireland, the Lord Chief Justice is responsible for determining judicial complaints in a broadly similar manner under a written Code of Practice required by section 16 of the Justice (Northern Ireland) Act 2002.
6. The Scottish Legal Complaints Commission was established under the Legal Profession and Legal Aid (Scotland) Act 2007 and provides a single point of contact for all complaints against legal practitioners operating in Scotland. The Regulatory Committee of the Law Society of Scotland is responsible for the oversight of the Society’s regulatory functions and must be chaired by a lay member. The Court of Session is responsible for regulating the professional practice, conduct and discipline of advocates, and has delegated this responsibility to the Faculty of Advocates. Rules which the Faculty makes are subject to the approval of the most senior judge in Scotland, the Lord President. An independent review of the regulation of legal services in Scotland was published in October 2018.[[2]](#footnote-2)
7. There are no instances recorded of judges being subject to legal or disciplinary proceedings in the exercise of their fundamental rights.
8. **Please provide information on whether, and to what extent, the exercise of the fundamental freedoms referred to above has been regulated in codes of judicial ethics or professional conduct developed by professional associations of judges and prosecutors in your country. Do these codes expressly include provisions concerning the exercise of these rights through the use of digital technologies?**
9. For judges, please see answer to question 1. We are not aware of any additional guidance issued by judges’ associations.
10. Prosecutors in England and Wales who are members of one of the legal professions will be bound by the ethical codes which apply to that branch of their profession:

* For barristers: https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/
* For solicitors: http://www.sra.org.uk/solicitors/handbook/code/content.page
* Associate Prosecutors are bound by the Code of Conduct for the Institute of Legal Executives: https://www.cilexregulation.org.uk/conduct-and-complaints/code-of-conduct
* All the above are also subject to the CPS Code of Conduct: https://www.cps.gov.uk/publication/cps-code-conduct
* In addition, as all CPS staff are civil servants, they are also subject to the Civil Service Code: https://www.gov.uk/government/collections/civil-service-conduct-and-guidance

1. In Scotland, prosecutors are either qualified solicitors or qualified advocates. Solicitors are bound by the Law Society of Scotland Codes of Conduct, and advocates by the Faculty of Advocates Code of Conduct. As in England and Wales, all prosecutors are also bound by the Civil Service Code.
2. **What kind of restrictions (constitutional, legal or regulatory) can be found in your legal system to the exercise of these freedoms? What is the rationale for these restrictions? Do these restrictions apply both offline and online? And if not, are there particular restrictions on the exercise of these rights through the use of digital technologies?**
3. **Please elaborate on the nature of restrictions specifically applicable to the exercise of fundamental freedoms by judges and prosecutors. In particular:**

* **Are these restrictions dependent on the position and matters over which the particular judge/prosecutor has jurisdiction?**
* **Should the venue or capacity in which these opinions are given be taken into account (for instance, whether or not they were exercising or could be understood to be exercising their official duties)?**
* **Should the purpose of such opinions or demonstrations be taken into account?**
* **To what extent, if at all, is the context – such as democratic crisis, a breakdown of constitutional order or a reform of the judicial system – relevant when evaluating the applicability of these restrictions?**

**Judges**

1. There is a statutory prohibition on salaried judges from becoming members of the House of Commons and from sitting or voting in the House of Lords, a committee of the House of Lords or a joint committee of both Houses.[[3]](#footnote-3) This prohibition is also set out in the memorandum on conditions of appointment and terms of service for judges which explains that judges should avoid any appearance of political ties – e.g. by attending political gatherings, political fundraising events, contribution to political parties or speaking within political forums. The terms of service also state that: “Judges must ensure that while holding judicial office they conduct themselves in a manner consistent with the authority and standing of a judge. They must not, in any capacity, engage in any activity which might undermine, or be reasonably thought to undermine, their judicial independence or impartiality.”
2. Freedom of expression can be restricted by public authorities under Article 10 of the ECHR if it can be shown that their action is lawful, necessary and proportionate in order to maintain the authority and impartiality of judges. European Court of Human Rights case law suggests that, regarding the right to freedom of assembly and association, judges are part of the administration of the State and therefore it is possible to impose restrictions under Article 11 of the ECHR.
3. There are no other constitutional or legislative provisions regarding specifically the exercise of the right to freedom of expression, of association or to peaceful assembly of judges.

**Judges - elaboration on the nature of restrictions**

1. The Lord Chief Justice of England and Wales and the Senior President of Tribunals (UK) authorised the Guide to Judicial Conduct, first published by the Judges’ Council in October 2004, with the latest revision published in March 2018.[[4]](#footnote-4) It offers assistance to judges, coroners and magistrates about their conduct and is based on the principle that responsibility for deciding whether or not a particular activity or course of conduct is appropriate rests with each individual judge. This Guide is therefore not a code, nor does it contain rules other than where stated. Instead, it contains a set of core principles which will help judges reach their own decisions.

The Guide explains the three basic principles guiding judicial conduct: judicial independence, impartiality and integrity, which are distilled from the six fundamental values set out in the Bangalore Principles of Judicial Conduct 2002,[[5]](#footnote-5) including Principle 4.6.[[6]](#footnote-6)

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

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

The Supreme Court has adopted its own Guide to Judicial Conduct,[[7]](#footnote-7) published in 2009, as prepared and supported by the Justices of the Supreme Court. This Guide draws upon the principles contained in a revised version of the Guide for Judges in England and Wales which was published in March 2008 and refers to the Bangalore Principles of Judicial Conduct.

1. In Northern Ireland, the Office of the Lord Chief Justice (‘OLCJ’) has issued a Statement of Ethics for the Judiciary in Northern Ireland, broadly similar to the Guide to Judicial Conduct, which expressly refers to the Bangalore Principles as underpinning the Statement. As regards the need for impartiality see section 4 generally; section 4.3 specifically states that “a judge must forgo any kind of political activity and, on appointment, sever all ties with political parties. An appearance of continuing ties by, for example, attendance at political gatherings, political fundraising events or through contribution to a political party, should be avoided. The need for self-restraint also involves not participating in public demonstrations which, by associating the judge with a political viewpoint or cause, may diminish his authority as a judge and create in subsequent cases a perception of bias.” The OLCJ has issued IT and Information Security Guidance For The Judiciary Of Northern Ireland.
2. In Scotland, the statutory framework for the regulation of solicitors upholds the independence of the legal profession from the Government. The Law Society of Scotland[[8]](#footnote-8) is the regulatory body for solicitors in Scotland, and the Solicitors (Scotland) Act 1980[[9]](#footnote-9) as (amended most recently in 2010) underpins and is central to the regulation of the solicitors’ profession. Under the Legal Services (Scotland) Act 2010, the Court of Session is responsible for regulating advocates. The Court has delegated this responsibility to the Faculty of Advocates, the independent professional body to which all advocates belong.

**Prosecutors**

1. For prosecutors, restrictions are not dependent on the position of the prosecutor or matters over which they have jurisdiction; they are quite general – see para 3.4, 13.2, 13.4 and 17.4 of the Code of Conduct, set out in the answer to question 1 above. The application of the Code is not limited to official duties, or by purpose or context.

**Employment Law**

1. Like all workers, judges and prosecutors are free to join a trade union in the UK. Freedom of association is a well-established right. However, there are restrictions regarding the right to organise where this relates to industrial action, as industrial action supported by a small minority of a unionised workforce can trigger a huge amount of disruption to business and to ordinary people. It should only ever happen as a last resort, after all other attempts to resolve differences through dialogue have been exhausted. Strong support is therefore required for strike action ballots. The applicable conditions are found in the Trade Union Act 2016, which modernised the UK industrial relations framework. For industrial action to be lawful, the trade dispute must be with the workers’ direct employer. Secondary or sympathy action is prohibited because, in the 1960s and 1970s, secondary action by those with no direct connection to the main dispute had serious wide-ranging effects on the UK economy. The Act also provides for restrictions in relation to picketing: it must take place at or near the pickets’ place of work, it must be peaceful, not cause an obstruction, and be carried out by workers employed or recently employed by the employer, or by a union official. These restrictions are necessary as there has been violence and intimidation on picket lines in the past.
2. **Please provide information on the scope or interpretation that has been given to these restrictions by national courts, national judicial councils, prosecutorial councils or equivalent independent authorities with general responsibilities for disciplinary proceedings against judges and, where applicable, prosecutors. Please provide specific examples of these instances.**

The scope and/or interpretation given to any restrictions is set out in the answer to question 5.

1. **Please provide information on initiatives undertaken by professional associations of judges and, where relevant, prosecutors, to raise awareness of the risks associated with the exercise of their rights online, particularly on social media.**
2. The applicable codes are set out in the answer to question 3.
3. In Scotland, the Crown Office and Procurator Fiscal Service also provides internal guidance to all staff, including prosecutors, on the use of social media. This guidance focuses on staff welfare and security.
4. In England and Wales, page 20 of the Guide on Judicial Conduct covers Social Activities specifically: <https://www.judiciary.uk/wp-content/uploads/2016/07/judicial-conduct-v2018-final-2.pdf>.

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1. The Scotland Act 1998, the Northern Ireland Act 1998, and the Government of Wales Act 1998 (which was later effectively superseded by the Government of Wales Act 2006) established the three devolved legislatures and transferred to them some powers that were previously held at Westminster. Further powers have been devolved since these original acts, most recently through the Scotland Act 2016 and Wales Act 2017. [↑](#footnote-ref-1)
2. https://www2.gov.scot/Resource/0054/00542583.pdf [↑](#footnote-ref-2)
3. House of Commons Disqualification Act 1975, Northern Ireland Assembly Disqualification Act 1975, Constitutional Reform Act 2005. [↑](#footnote-ref-3)
4. <https://www.judiciary.uk/wp-content/uploads/2016/07/judicial-conduct-v2018-final-2.pdf> [↑](#footnote-ref-4)
5. <https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf> [↑](#footnote-ref-5)
6. A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary. [↑](#footnote-ref-6)
7. https://www.supremecourt.uk/docs/guide-to-judicial\_conduct.pdf [↑](#footnote-ref-7)
8. <https://www.lawscot.org.uk/> [↑](#footnote-ref-8)
9. <http://www.legislation.gov.uk/ukpga/1980/46/contents>; as amended by the Law Reform (Miscellaneous Provisions)(Scotland) Act 1990; Public Appointments and Public Bodies etc. (Scotland) Act 2003; Legal Profession and Legal Aid (Scotland) Act 2007 and Legal Services (Scotland) Act 2010 [↑](#footnote-ref-9)