

27 September 2017

The Rt Hon David Lidington, MP
Lord Chancellor and Secretary of State for Justice
Ministry of Justice
102 Petty France
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Dear Lord Chancellor

Judges' Services

We congratulate you on your recent appointment, confident that you will ensure the objectivity of the British judiciary is continued. We have a concern however about a series of events which detracts from justice being seen to be done. In our opinion, the independence and secular nature of the judiciary is seriously compromised by the annual Judges' Service in Westminster Abbey, and other similar Christian services that take place at the start of each judicial year. As you know, the service at Westminster Abbey is conducted according to the rites of the Church of England and the judges attend it fully robed, in their official capacity and during working hours. The service at York Minster features a procession involving High Court Judges, Circuit Judges, Tribunal Judges, District Judges, Queen's Counsel, and other members of the Bar attending in robes.

Not only is the Judges' Service incompatible with the generally accepted objective of achieving and demonstrating diversity in the judiciary, it also raises serious questions about the perception of neutrality and independence of the judiciary.

These Services conflict with at least the spirit of the judicial oath: '*without fear or favour, affection or ill-will*'. The Judges' Services appear to entwine what should be an independent judiciary with a particular strand of organised religion, the established Church.

This is not simply a theoretical point. Little publicity has so far been directed to a troubling aspect of the recently published Independent Peter Ball Review by Dame Moira Gibb into the circumstances surrounding ex-bishop Ball escaping justice for twenty years. While the Church hierarchy must shoulder much of the blame, the police, DPP and whoever imposed reporting restrictions in 1993 colluded to mislead the public and help Ball evade the justice to which they knew he should be subject simply because he was a bishop of the established Church.

It cannot be appropriate in an increasingly plural society for the judiciary to associate itself with, or appear to favour, one particular religious tradition or set of beliefs. Even if the argument is that these ceremonies are merely symbolic, symbolism itself is important. The legal system is supposed to be secular. Court proceedings do not begin with prayers and nor should the legal year.

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There is also a danger that a judge's attendance at the annual judges' services could create the impression of bias in favour of religion or a specific religion or denomination.

The perception of religious neutrality is especially key in cases that involve: religious bodies or beliefs that affect criminal defendants, civil parties or witnesses; actual or perceived points of difference between one religion or denomination and another; or conflicts between religious believers and non-believers. Witnesses may be members of any religion or none, a fact which is often demonstrated to the court by the operation of the Oaths Act 1978. Judges may need to rule on any of these issues.

A judge who has attended such a service may thus appear to have prejudged any religious issue by publicly appearing to officially support particular beliefs. No matter how much that judge strives to disregard such factors, there is likely to be a perception that, having so attended, they have demonstrated a manifest lack of impartiality in relation to religious matters, and so gives the appearance of being officially biased in favour of Anglicanism.

A judge will naturally have their own personal and private views about politics, religion and matters of controversy, but if those views have been demonstrated in an official capacity, that fact may give rise to a perception of partiality towards or against the political, religious or other organisation, group or cause involved.

Each judge's religious outlook should be entirely a private matter for that judge. Their ability to keep that private is seriously compromised by official attendance at Judges' Services, which shows disregard for their duty to avoid acting in a way that is seen to compromise their impartiality.

This duty is outlined in the Guide to Judicial Conduct. But that Guide is conspicuously silent on guidance about a judge's religious activities. It would seem that the failure of that Guide to provide proper advice to judges about religious impartiality is heavily influenced by the realisation that doing so would throw into question the justification for continuing Judges' Services. That Guide needs to provide proper advice to judges regarding religion and belief, just as it already does in other areas, and to give appropriate guidance as to where the line should be drawn between private opinions and the public/official expression of them.

No one would suggest a judge's personal attendance at a religious service should debar them from sitting on any case in which a material religious issue may arise. But if a judge takes a prominent role in any religious organisation or attends a religious service **in their official judicial capacity**, that may lead to a "reasonable apprehension of bias".

It is to the great credit of some judges, such as Lord Justice Laws, that they put aside their personal religious views when delivering judgements on religious matters. Hopefully, all judges would do the same, but no matter how much each judge strives to do that, the ceremony still risks creating an appearance of bias, so compromising the old adage: Justice must be done and be seen to be done.

As we expect you know, the tradition of the judges' service dates back to the Middle Ages, when the church and the state were closely entwined. The medieval belief was

that it was proper for judges to seek 'divine guidance'. Seeking "God's strength and guidance" is still a feature of the ceremony.

There is no provision in English law for judges to base their judgments on anything other than the law and the facts of the case, as they objectively see them. Public confidence in justice is undermined if judges are believed to allow their decisions to be influenced by religious considerations.

As you will be aware, the Church's role in criminal and civil justice ceased in the 19th century. Its courts remain to administer ecclesiastical law of the Church of England, solely for those in the Church within its jurisdiction, but no longer the population as a whole.

Whilst it may be that the Christian religion has informed some of our laws in the past, many more recent changes in our laws have taken place despite strong objections from religious bodies, especially the Church of England. The world has moved on, and today's standards are higher. For judges to appear to take a partial view of any religious issues is no longer defensible on objective grounds and creates an impediment to public confidence in justice.

We urge you to recognise that religious and non-religious diversity is a feature of modern Britain and question how it can be appropriate for judges of many faiths and none to pray together for guidance. As the legal commentator Joshua Rozenberg puts it: "It is not very edifying to see independent judges taking part in religious rites which are, at best, meaningless to them and, at worst, offensive to their actual beliefs."

We have no objections to the 'Lord Chancellor's breakfast' that takes place immediately after the Judges' Service.

But Judges' Services add nothing to judicial competence, and serve only to privilege Christianity and undermine the impartiality of the judiciary. They are also a burden on the taxpayer. It cannot be in the interests of justice that these services continue and we ask that you initiate their ending.

We look forward to your response.

Yours sincerely

Keith Porteous Wood
Executive Director