

The bar at the Shard has been used for lawyers' summer parties, to which judges are often invited

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Judges voice concern at attempt to 'gag judiciary'

Official guidance on engaging in public debates has been met by a backlash

Catherine Baksi | Jonathan Ames Legal Editor

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A Whitehall diktat aimed at clamping down on judges speaking in public and attending parties has been criticised as an attempt to “gag” the judiciary.

Guidance from HM Courts and Tribunals Service told all judges in England and Wales that they could face disciplinary action if they engage in public debate “on any topic” without getting permission to speak or passing the request to an authorised official.

It also instructed judges to think twice about accepting invitations to events hosted by law firms or barristers’ chambers. Judges were told to “ensure that the occasion does not create a public perception of partiality” towards an organisation, group or cause.

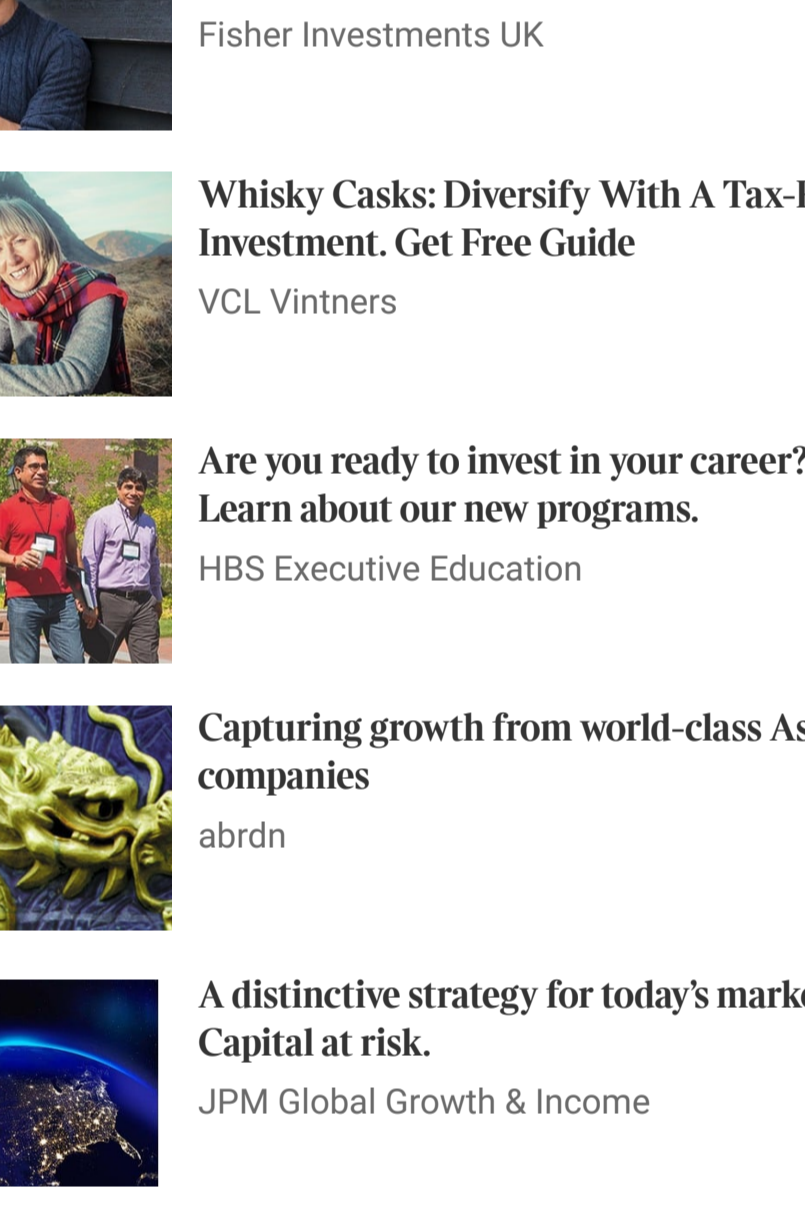
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City law firms and commercial law barristers’ chambers spend tens of thousands of pounds each year on summer parties to impress clients. Judges are often invited to the events, which are held in luxurious surroundings ranging from the gardens at the Inns of Court to the bars at the Shard, which offers panoramic views of London.

The edict told judges to “exercise caution when invited to take part in what may be legitimate marketing or promotional activities, for example by barristers’ chambers or solicitors’ firms, or professional associations, where the object of judicial participation may be perceived to be the impressing of clients or potential clients”. Retired judges are also asked to heed the guidance and “avoid any activity that may tarnish the reputation of the judiciary”.

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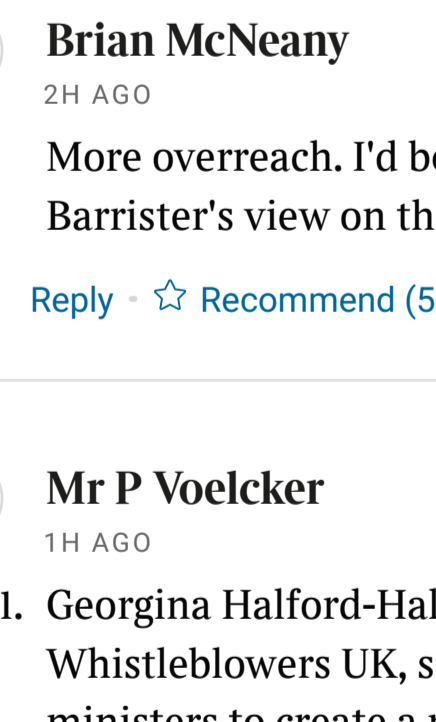
Judge Nicholas Cooke KC, a former judge at the Old Bailey, said a “blanket ban on speaking without the approval of leadership judges raises problems”.

He was concerned that the guidance was an attempt to “silence” judges and former judges and could stop them from contributing to public debate on matters they had experience of, including the problem of prisoners detained indefinitely for public protection or miscarriages of justice such as the Post Office Horizon scandal.

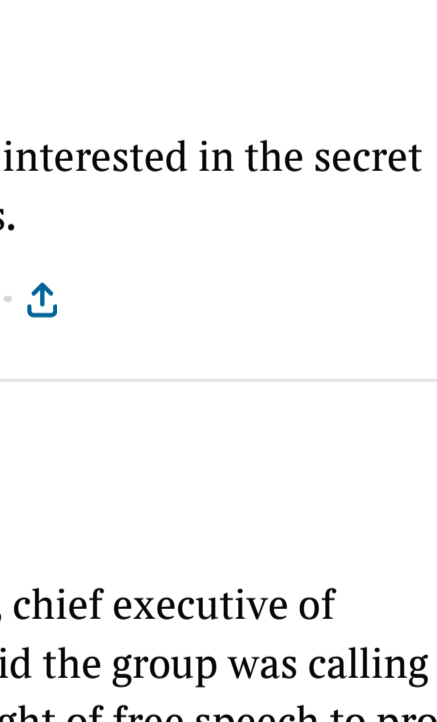
“If you exclude judges from public debate and only allow approved people to comment, the public will miss out,” Cooke said. Such guidance would potentially inhibit judicial contact with community groups and schools, where judges do not get advance notice of the questions that they will be asked.

He said the ruling could also prevent judges from professing religious beliefs and deter some people from taking part-time judicial posts because it might restrict their ability to continue to work as councillors or with charities.

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The default position should be to allow judges the freedom to speak, he said, while making it clear that they are expressing their personal views and not talking on behalf of the judiciary.

Kaly Kaul KC, a crown court judge and founder of the Judicial Support Network, said that her group was “deeply concerned at any attempt to limit judges’ rights to speak out responsibly on issues that affect the administration of justice”. She suggested the guidance “will effectively impose pressure on us to remain silent unless what we say is deemed uncontroversial”.

Georgina Halford-Hall, chief executive of Whistleblowers UK, said the group was calling on ministers to create a right of free speech to protect the judiciary and that the edict was “tantamount to a power grab by lobbies”.

In a foreword to the guidance, Lord Burnett of Maldon, the lord justice, said: “The intention was not to prescribe a detailed code but to offer assistance to judges on the types of issues they might encounter and to set out principles from which they could make their own decisions and so maintain their judicial independence.”

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More overreach. I'd be interested in the secret Barrister's view on this.
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If the attendance at a particular function raises questions as to a judge's impartiality, it's up to the barristers in later cases to raise the question at the time.
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