

# How 'Honourable' are High Court judges?

Professor Graham Zellick QC unravels the mysteries of parallel, non-optional & post-retirement titles



## IN BRIEF

- ▶ May High Court judges attach the prefix 'The Honourable' to their non-judicial title?
- ▶ May retired High Court judges use the prefix 'The Honourable'?
- ▶ Should any of the current rules be changed?

Plusne judges of the High Court—all justices of the High Court other than the heads of division—have the official title or style of 'The Honourable Mr/Mrs/Ms Justice Smith', with forename included only if there is already a judge with that or a similar surname so as to avoid confusion. Although no one seems to know the origin of or authority for this style of address, it is long-established, universally recognised and not disputed.

Also, High Court judges are knighted on appointment or, if a woman, appointed Dame Commander of the Order of the British Empire (DBE). Men are made Knights Bachelor, but as there is no direct female equivalent, women become DBEs. (The male equivalent of DBE is KBE (Knight Commander), but no change was made to the honour conferred on male judges following the appointment of women.)

High Court judges are now the only recipients of an honour routinely on appointment. The accepted principle today is that no honours should be automatic. Others

who traditionally receive knighthoods or damehoods in particular posts—such as permanent secretaries in the civil service, lieutenant-generals in the Army and the corresponding ranks in the other two services, and the Metropolitan Police Commissioner—are now required to wait some time before the award is made. Thus far, the automatic nature of the award has been fiercely defended and survived occasional challenge, but at some point in the future could prove as vulnerable to attack as judicial pension schemes.

It is also the case that the honour is not optional. There have apparently been instances of appointees who wished to decline the honour, but it has been made clear to them that it must be accepted.

## The prefix 'Hon' for serving judges

Thus, High Court judges have two parallel titles: their judicial title and their knighthood or damehood. The first question that arises is whether it is correct to prefix the title 'The Honourable' to the non-judicial or personal title, as many (but not all) judges do (it is interesting to note, as an aside, that many seem to prefer the non-judicial title outside the courtroom, even though the judicial office and title place its holder several rungs up the official table of precedence from a basic knight or dame). For completeness, it is perhaps worth stating that 'Hon', like 'Rt Hon', 'Rev' and 'Very/Rt/Most Rev', must always be

preceded by the definite article and may never be coupled with the surname alone.

*Who's Who* and *Debrett's People of Today* attach the prefix to both the judicial and personal titles of all High Court judges. *Titles and Forms of Address: A Guide to Correct Usage*, published by A&C Black, the publishers of *Who's Who*, unsurprisingly supports the usage adopted in its companion publication, *Who's Who*, but the section on 'Forms of Addressing Persons of Title' in the introductory sections of *Debrett's People of Today* suggests that the prefix attaches only to the judicial title. It states that the official superscription (their terminology) is 'The Hon Mr Justice' and the private is 'Sir John', which is of course at variance with the practice adopted in the biographical entries later in the same volume.

It is odd that in a country replete with titles where there are detailed rules as to forms of address, correct style and order of precedence, a matter like this should be open to doubt. It would require an instrument such as a Royal Warrant to validate the usage and no one in the Crown Office or the College of Arms can identify any such document.

A comparison with circuit judges on this point may not be helpful, but the title 'His/Her Honour Judge' cannot be separated prior to retirement. Thus, a serving circuit judge is 'His Honour Judge Smith', becoming 'His Honour John Smith' on retirement. That form would never be used prior to retirement: it would be incorrect and misleading. Insofar as it offers any guidance, it suggests that 'The Hon' for High Court judges attaches only to the judicial title (no similar issue arises with Lords Justices of Appeal and Justices of the Supreme Court, as they are appointed members of the Privy Council on appointment, which carries the prefix 'The Right Honourable', and they remain members for life).

The nearest thing to a definitive answer, however, may be found in an old policy file in the Crown Office, discovered by Mr Grant Bavister, formerly deputy head of the Crown Office and now working at the College of Arms. The file contains a memorandum dated 23 June 1955 from the then head of the Crown Office John Hunt to the Permanent Secretary in the Lord Chancellor's Office, Mr Coldstream (later Sir George Coldstream, KCB, KCVO, QC).

It is not known precisely what questions Mr Coldstream had put to Mr Hunt or why, but the memorandum deals comprehensively with the issues of entitlement to 'The Honourable' prefix considered in this article.

Mr Hunt first refers to a letter sent in April 1934 by the Lord Chancellor's Permanent Secretary AJN Paterson to the New Zealand High Commissioner. Paterson had written: '... in Court documents... a puisne Judge is described as "The Honourable Mr Justice...". In other documents, the correct description of

a puisne Judge is “Sir A.B.C., Knight, one of the Justices of the High Court of Justice”.

Hunt then cites a letter dated 22 October 1948 from the Home Office to the Colonial Office which quotes a minute written by the late Sir Harry Boyd: ‘... Judges of the High Court are addressed in correspondence as “The Honourable Mr Justice Smith” and the Christian name is never used. The “Honourable” is never used in connection with “Sir” unless the Judge happens to be the son of a peer.’ Hunt reinforces this view by saying he has spoken to the Lord Chief Justice’s Secretary who ‘confirms the practice not to mix “Honourable” with “Sir” in ordinary cases’.

In the absence of any evidence supporting the contrary view, it is submitted that, notwithstanding recent practice, the prefix ‘The Honourable’ attaches only to the judicial title and it is a solecism for puisne judges to be described as ‘The Hon Sir/Dame’.

#### Retired High Court judges

Similar uncertainty to that discussed above surrounds High Court judges who have retired. No one questions the loss of the ‘Mr/Mrs Justice’ title, but a number of retired judges continue to style themselves, or be styled, as ‘The Honourable’, in accordance with the long-standing advice to that effect given by the Lord Chief Justice’s office based on a manual kept in the office. It is explicitly recognised in Debrett’s online forms of address and in A&C Black’s *Titles and Forms of Address* and is adopted in *Who’s Who*, which so styles some retired puisnes but not others, presumably in accordance with their personal wishes.

No one can identify any royal or other instrument that authorises this usage, without which its legitimacy must be questioned. It may be argued that support is derived from the practice in relation to circuit judges, who lose the title ‘Judge’ but retain the appellation ‘His/Her

Honour’. However, that has been expressly authorised, no doubt in recognition of the fact that circuit judges routinely receive no honour either on appointment or retirement. Whereas High Court judges are knighted or made dames, which honour obviously continues into retirement, a retired circuit judge would have nothing to show for his or her period in judicial office (that, of course, is true of the many others who now have the title of Judge but no other appellation: district judges and the many kinds of tribunal judges). Accordingly, the position regarding circuit judges offers no assistance in resolving the question of retired High Court judges.

“It is, of course, possible that steps will now be taken to regularise the usage”

The contrary view, that the prefix is lost, is expressed in the manual on titles and forms of address maintained by the Crown Office and it may perhaps be supposed that those retired High Court judges who eschew the honorific do so because they doubt its correctness. Or it could be because they regard it as unnecessary or inappropriate, its only other use in Britain being for the children of barons and viscounts and the younger sons of earls. Its wider use in many Commonwealth countries and the US to denote current and former holders of parliamentary, judicial and public office should, however, make it more appealing.

The conclusion also follows logically once one accepts, as argued above, that the prefix attaches only to the judicial title, so that once that is relinquished, the linked prefix goes too, but the view preferred here does not depend

on that argument.

It is, of course, possible that steps will now be taken to regularise the usage. That would presumably require the Lord Chief Justice (no doubt after consultation with the heads of the three divisions of the High Court) to persuade the Lord Chancellor to seek the Queen’s approval. Her Majesty, or the Lord Chancellor before a formal request to the Sovereign, would presumably take advice from Garter King of Arms. Whatever happens, certainty is desirable.

Another interesting question is why High Court judges, unlike circuit judges, cease to be Queen’s Counsel, and whether that custom should be revisited, but that must be the subject of a separate article.

#### Conclusions

- (1) It has been assumed in recent years, incorrectly, that High Court judges may append the prefix ‘The Honourable’ to their personal titles: ‘The Hon Mr/Mrs Justice ...’ is correct; ‘The Hon Sir John/Dame Joan Smith’ is not.
- (2) Accordingly, on retirement, High Court judges lose both their ‘Hon’ and their ‘Mr/Mrs Justice’, because they are inseparable; and in any case there is no explicit authority, such as a Royal Warrant, to retain it.
- (3) Consideration could be given to authorising retired High Court judges, by royal warrant or license, to use the prefix ‘The Honourable’ (perhaps limited to those who have served a prescribed minimum number of years or, if appointed close to the statutory retirement age, have remained in office until 70). NLJ


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