

NOTES ON THE STYLE OF THE LAW

A Titular Mess

by

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≈ norms ≈ procedure ≈ rules ≈ amendment ≈ titles
≈ reform ≈ unlawfulness ≈



WHEN the Lord Chief Justice, the Rt Hon. the Lord Burnett of Maldon, and the Senior President of Tribunals, the Rt Hon. Sir Keith Lindblom, announced on 1 December 2022 that modes of court address were changing, there was a great deal of media attention. The announcement purported (see *infra*) to re-title the style of a large class of and tribunal and inferior court judges (as well as High Court Masters) from ‘Sir/Madam’ to ‘Judge’. The merits or demerits of this change are a matter which has already been much debated in the legal press and in various social media.

Rather, this post is about a glaring flaw in the execution of this change, which, it must be said, reflects poorly on the operating practices of HM Judiciary in bringing out this change. The change purports to alter the mode of address for a District Judge (Magistrates’ Court).¹ For civil proceedings in magistrates’ courts governed by the Magistrates’ Court Rules 1981, this change can proceed without any issue. However, in criminal proceedings, the Criminal Practice Directions 2015, Division XII prescribe that that a DJ(MC) is to be addressed in court as *either* ‘Sir/Madam’ or ‘Judge’.² Thus, Directions explicitly allow for both options, and calling a DJ(MC) ‘Madam’ in criminal proceedings is a perfectly valid choice.

When the CrimPD and an informal announcement on the website compete, it would seem that the CrimPD must win, because the CrimPD are secondary legislation, lawfully made in accordance with the Courts Act 2003, s 74 and the Constitutional Reform Act 2005, Schd 2, part 1. They therefore enjoy a normative status above anything which is not primary legislation. Not even a direct command from His Majesty the King could overturn them!

¹ Which continues, incidentally, to be the unwieldiest and worst judicial title in England & Wales.

² CrimPD XII, B.2

One neat possibility is that the announcement referenced *supra* is itself an amendment to the CrimPD made by the LCJ. This would solve the problem rather perfectly. However, the change on the website is unlikely to be an amendment. Even if we assume that this website posting had the agreement of the Lord Chancellor required for designated directions (and in fairness, there is nothing which says that agreement was not obtained), the normal and accepted for promulgating, by public notice, amendments to the CrimPD is by issuing them in the form of a judgment with neutral citation so that it becomes part of the public record.³ Even if we adopt the absurd premise that the noble LCJ decided to abandon the longstanding procedure, previous amendments to the CrimPD are marked by *saying they are amendments*. Nothing in this web announcement (which does not link to any other resources or documents) indicates it is an amendment to the CrimPD. Therefore, it cannot be an amendment, because if it were, it would be law made by stealth, and the public would have no way of knowing what was or was not part of the CrimPD. Thus, we arrive at a complete mess.

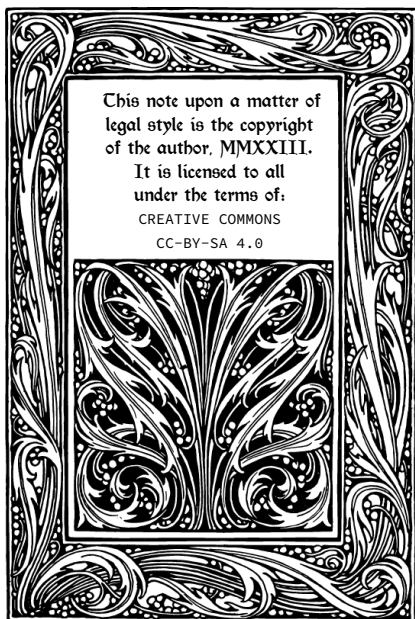
The worst thing about this mess is how easy it would have been for a careful, methodical decision maker — that is to say, the normal qualities of HM Judiciary—to completely avoid that. It would not have been difficult or onerous to promulgate an amendment to the CrimPD, and then there would be one consistent rule. Instead, we now have a situation where the permissible address of a DJ(MC) will change depending on which hat the judge is wearing in court! This is upsetting not because it particularly matters in the grand scheme of justice,⁴ but rather because if this change is so botched, it suggests something in the procedures within HM Judiciary is lacking. Changes to the rules of court should be done only after the greatest due diligence about the impact of altering the rules. This, on the other hand, feels rushed and for that reason, scares me. Readers of this publication are urged to manifest their discontent with this point by simply exercising their right under the CrimPD to continue calling DJs(MC) ‘Sir’ or ‘Madam’!

This Note has been delayed in publication, as your editor waited for the Judicial Press Office to respond to repeat requests for comment, but none were forthcoming. This is a small publication, and the JPO is not required to respond to even the politest of requests from niche web-logs. In the event the JPO should subsequently get in touch with comment, this Note shall be edited to reflect such comment.

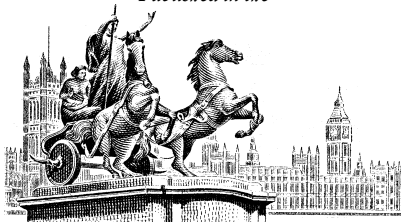


³ See, *eg*, [2015] EWCA Crim 1567.

⁴ It matters quite a lot to me, though.



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