

The Judicial Conduct (Judicial and other office holders) Rules 2014

Supplementary Guidance

Introduction

The Judicial Discipline (Prescribed Procedures) Regulations 2014 set out the process for dealing with complaints about judicial conduct. Regulation 7 provides for the Lord Chief Justice with the agreement of the Lord Chancellor, to make rules for dealing with complaints about judicial conduct.

These Rules, made by the Lord Chief Justice with the agreement of the Lord Chancellor, set out the procedure for dealing with allegations of misconduct against court judges and coroners (as defined by rule 3) .

Roles and Responsibilities

1. *The Lord Chancellor and the Lord Chief Justice*

The Lord Chancellor and the Lord Chief Justice share overall responsibility for ensuring that complaints of misconduct against courts judges and coroners are properly investigated and determined in accordance with the Judicial Conduct (Judicial and other office holders) Rules 2014. The Lord Chancellor and the Lord Chief Justice are responsible for the final decision in relation to judicial discipline and there is no right of appeal against their decision. They are assisted in this capacity by nominated judges, investigating judges; disciplinary hearing panel members and officials in the Judicial Conduct Investigations Office (JCIO).

2. *The Judicial Conduct Investigations Office (JCIO)*

The JCIO supports the Lord Chancellor and the Lord Chief Justice in their joint responsibility for judicial discipline and may give advice to any person in respect of the disciplinary process.

The JCIO is responsible for considering an allegation of judicial misconduct and for assessing whether the behaviour alleged could amount to misconduct. In order to do so, officials may make such enquiries as are necessary in order to investigate misconduct allegations. Where an assessment is made that an allegation could amount to misconduct the JCIO will refer the complaint to a nominated judge. If it is clear that an allegation does not amount to misconduct the JCIO must dismiss that complaint in accordance with rule 21.

Complaints may be sent to the JCIO by:

On line application form - via the JCIO website

<http://judicialconduct.judiciary.gov.uk/>

E-mail – addressed to inbox@jcio.gsi.gov.uk

Post - addressed to: The Judicial Conduct Investigations Office, 81- 82 Queens Building, Royal Courts of Justice, Strand, WC2A 2LL.

Telephone: 020 7073 4719

Fax – 020 7073 4725

The JCIO will keep parties informed of progress of the investigation. At the conclusion of the case the JCIO will write to the complainant and (if they are aware of the complaint) the judicial office holder with the outcome of the complaint. They will inform the parties of their right to complain to the Judicial Appointment and Conduct Ombudsman if they are unhappy with the way in which the complaint has been handled (See paragraph 8 below).

3. The Complainant

The complainant is responsible for making their complaint in writing within three months of the matter complained of; for being specific about the reason for the allegation of misconduct; and, for complying with timescales or requests for information made by the JCIO.

4. The Subject of the Complaint

The subject of the complaint is responsible for co-operating with the investigation process and for responding to requests for comments and information in a timely manner, and in accordance with the rules.

5. The Nominated Judge

Nominated judges are appointed by the Lord Chief Justice with the agreement of the Lord Chancellor. Their role is to make a recommendation to the Lord Chancellor and the Lord Chief Justice as to whether the matter complained of amounts to misconduct and if so what disciplinary sanction may be appropriate. Where an allegation does not amount to misconduct the complaint will be dismissed by the nominated judge; or, if appropriate, the nominated judge may decide that the subject of the complaint should receive informal advice. Where appropriate a nominated judge may direct that a complaint is referred to an investigating judge for further enquiries to be made. Where there is no formal complaint but a nominated judge receives information about the conduct of a judge which suggests disciplinary action may be appropriate, the nominated judge may refer the matter to the JCIO for investigation.

6. Investigating Judge

Where a nominated judge considers that a case is particularly complex or serious or where the Lord Chancellor and the Lord Chief Justice request further investigation, an investigating judge may be appointed to carry out further enquiries. At the conclusion of the investigating judge's enquiries he or she is responsible for preparing a report for the Lord Chancellor and the Lord Chief Justice with a recommendation as to whether the alleged behaviour amounts to misconduct and if so, what disciplinary sanction may be appropriate.

7. The Disciplinary Panel

The Disciplinary Panel is convened at the request of the subject of the complaint when a nominated judge has made a finding of judicial misconduct and recommended that the subject of the complaint be removed or suspended from office; or as directed by the Lord Chancellor and the Lord Chief Justice. A panel will be formed of four members, two judicial (one of senior rank, (the chairman of the panel) and one of the same rank as the subject of the complaint) and two lay members. The panel is responsible for reviewing the evidence, representations, the nominated judge's recommendation and where appropriate, for taking oral evidence from the subject of the complaint. The panel will prepare a report for the Lord Chancellor and the Lord Chief Justice with a recommendation as to whether the alleged behaviour amounts to misconduct and if so, what sanction may be appropriate.

8. The Judicial Appointment and Conduct Ombudsman (JACO)

Section 110 of the Constitutional Reform Act 2005 provides for the subject of the disciplinary proceedings or the complainant to apply to the JACO for a review of the handling of matters involving judicial conduct or discipline on the grounds that there has been a failure to comply with the prescribed procedures, or some other maladministration.

The JACO cannot comment on the merits of any decision made in respect of a particular case however if satisfied that the grounds of the complaint to him are justified he may make recommendations to the Lord Chancellor and the Lord Chief Justice. If the JACO considers any decision to be unreliable as a result of maladministration he can set the decision aside and refer the matter back to the JCIO to be started afresh.

A complaint to JACO should be made within 28 days of receipt of the final letter indicating the outcome of your complaint. Further information about the Ombudsman's role can be found at www.justice.gov.uk/about/jaco/how-to-make-a-complaint or by telephoning: 0203 334 2900.

9. Confidentiality

Section 139 of the Constitutional Reform Act 2005

Section 139 of the Constitutional Reform Act (CRA) prohibits someone who obtains or is given confidential information for the purposes of dealing with judicial complaints and discipline disclosing it except with lawful authority. The information is confidential if it relates to an identified or identifiable individual. It can only be lawfully disclosed if one of the following conditions is met:

- (a) each person to whom the information relates (this includes the giver of an opinion about another, as well as the person referred to) agrees;
- (b) the disclosure is for, and is necessary for the exercise of functions under the discipline provisions of the Act, or of section 11(3A) of the Supreme Court Act; or the regulations and rules made under the Constitutional Reform Act; or
- (c) disclosure is required under rules of court or a court order for the purposes of legal proceedings.

Information about disciplinary action can, however, be disclosed if the Lord Chancellor and the Lord Chief Justice so agree. The section does not prevent the disclosure of information which is already, or has previously been, available to the public from other sources.

Information provided during the course of a complaint or conduct investigation should be considered to be confidential to the person who disclosed it (whether the complainant, the subject of the complaint or a third party) but may be disclosed in accordance with S139 of the CRA 2005 and should be treated as such. Any queries in relation to specific cases should be addressed to the JCIO.

[Please Note: reference should be made to the full text of section 139 of the Constitutional Reform Act 2005 for the full details of requirements in relation to confidentiality]

10. Guidance to the Rules

Rule 6: The JCIO may only consider a complaint that contains an allegation of misconduct by a judge or other office holder. Such misconduct relates to the judge's personal behaviour for example: a judge shouting or speaking in a sarcastic manner in court; or misuse of judicial status outside of court. It does not relate to decisions or judgments made by a judge in the course of court proceedings. The only way to challenge such matters is through the appellate process.

Where a complaint does not contain an allegation of misconduct the JCIO will advise the complainant that it cannot investigate the complaint and will inform the complainant of the reasons for rejection.

Complaints made by HMCTS/ MoJ staff or judicial office holders

It is expected that the appropriate internal grievance process will have been fully considered as a possible means of dealing with a complaint when the matter relates to complaints made by HMCTS /MoJ staff , or are made by a judicial office holder about a fellow judicial office holder. The Judicial HR within the Judicial Office is able to provide advice and support in respect of the internal grievance process.

Rule 7: Complaints must be made to the JCIO in writing however special arrangements may be made for anyone who is unable to write down a complaint, for example because of language difficulties or disability.

Rule 10: Unless there is evidence to suggest otherwise, it is assumed that the submission of a complaint implies consent to disclose it and the name of the complainant to the subject of the complaint and anyone who may be able to assist with the investigation of the complaint. Complaints will not be accepted by the Judicial Complaints Investigations Office where the complainant states that they do not want their identity disclosed to the subject of the disciplinary proceedings.

Rule 14: Representations requesting to extend the time limit for accepting a complaint must be made in writing to the JCIO, and must set out clearly the reasons why it was not possible to lodge the complaint with the JCIO within three months of the alleged misconduct.

Rule 15: The JCIO may only extend the time limit where it is satisfied that there are exceptional reasons as to why the complainant was unable to lodge the complaint within three months of the matter complained of.

Rule 21 (a) A complaint must set out all the details required under rule 5 and provide specific details about the alleged misconduct. For example a complaint which simply states that a judge was rude is not adequately particularised. In this example the complainant should state what the judge said or did to cause the complainant to believe that the judge was behaving inappropriately and at which part of the hearing this occurred.

Rule 21(b) The constitutional independence of the judiciary means that decisions made by a judicial office holder during the course of proceedings are made without the interference of ministers, officials or other judicial office holders (unless they are considering the matter whilst sitting in their judicial capacity, for example, in an appeal hearing). Judicial decisions include, but are not limited to, the way in which proceedings are managed, disclosure of documents, what evidence should be heard and the judgment or sentence given.

Rule 21 (d): In many cases vexation is inferred from a pattern of past complaints and the absence of reasonable cause.

Rule 21 (e): A complaint may be dismissed under this rule in circumstances where a complaint is adequately particularised but it bears no relationship to real facts.

Rule 21 (f): A complaint may be dismissed under this rule where it is clear that even if the facts complained of occurred, the actions or behaviour do not amount to misconduct requiring disciplinary sanction.

Rule 24 (b): The Lord Chief Justice has directed that judicial office holders should not be troubled with complaints that can be dismissed under rule 21 without further investigation. It is possible therefore that the subject of the complaint will be unaware that a complaint has been lodged with the JCIO and would not therefore need to be informed under this rule. The JCIO will however contact the judge if they are to make further inquiries, such as listening to a recording of a hearing or seeking third party statements. In these circumstances the JCIO will inform the judicial office holder if the complaint is dismissed under rule 21.

Rule 30: The summary process is invoked in the circumstances described at 29(a) – (o). The purpose of the summary process is to deal with matters that would likely result in removal from office, in an expeditious manner. The subject of the complaint is provided with the opportunity to explain why they should not be removed from office. In some cases, the Lord Chancellor and the Lord Chief Justice may decide that further investigation is required before reaching a decision. In such circumstances the matter may be referred for further investigation in accordance with the Rules.

Rule 30(n): - Sitting requirements are set in the terms of appointment for each judicial office holder. A failure to meet the required number of sittings without good reason and, without the agreement of the appropriate leadership judge, may result in dismissal under this rule.

Rule 31: The JCIO will write to the judicial office holder setting out the allegations against him/her, and will invite him/her to explain why they should not be removed from office under this summary process.

Rule 38(c): Where the nominated judge decides that disciplinary action is appropriate he may recommend that the Lord Chancellor and the Lord Chief Justice issue the subject of the complaint with: formal advice; a formal warning; or, a reprimand. In the most serious of cases he or she may recommend suspension or removal from office.

Rule 41(c): Where there is no finding of judicial misconduct, but, the nominated judge considers that the complaint raises issues that should be addressed with the judicial office holder through pastoral support, advice or training, the nominated judge may decide to raise the matter directly with the subject of the disciplinary proceedings or may refer it to the appropriate leadership judge to provide guidance or training.

Rule 73: There is no requirement to convene a disciplinary panel following a judicial investigation which results in a recommendation for suspension or removal from office, the investigating judge's report will therefore be sent directly to the Lord Chancellor and the Lord Chief Justice.

Rule 103: The fact that a complaint may relate to on going proceedings does not prevent it being considered under these rules. Therefore a complaint will only be deferred under this rule where the JCIO considers there is good reason to do so.

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