

# The Judicial Conduct (Magistrates) 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 magistrates.

### 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 magistrates are properly investigated and determined in accordance with the Judicial Conduct (Magistrates) Rules 2014. The Lord Chancellor and the Lord Chief Justice are responsible for the final decision in relation to judicial discipline. They are assisted in this capacity by Advisory Committees, investigating judges; disciplinary hearing panel members and officials in the Judicial Conduct Investigations Office (JCIO).

#### 2. *Advisory Committees*

The role of the Advisory Committee is to handle any matter about a magistrate which brings into question the possible exercise of disciplinary powers by the Lord Chancellor and the Lord Chief Justice; and to support the Lord Chancellor and the Lord Chief Justice in the decision making process by providing advice. When making recommendations to the Lord Chancellor and the Lord Chief Justice Advisory Committees must have regard to the sanctions/options available to the Lord Chancellor and the Lord Chief Justice.

The Lord Chancellor and the Lord Chief Justice expect Advisory Committees to handle complaints in a timely manner and in accordance with the procedures prescribed in the rules. There will be occasions when it is necessary to transfer the handling of a complaint to an alternative Advisory Committee. If an Advisory Committee agrees to handle a complaint on behalf of another Advisory Committee it must ensure that it has the capacity to handle the complaint in accordance with the expectations of the Lord Chancellor and the Lord Chief Justice.

#### 3. *Advisory Committee Chairmen*

The Advisory Committee Chairman (or Deputy nominated under rule 5) will handle all disciplinary matters in the first instance, with the advice and assistance of the Secretary.

Where a matter falls to be considered further, the Chairman (or Deputy) will appoint a conduct panel which will report, as necessary, via the Judicial Conduct Investigations Office, to the Lord Chancellor and the Lord Chief Justice.

#### *4. Advisory Committee Secretary*

The Secretary ensures that copies of the rules are made available to the subject of a complaint, magistrates or members of the public wishing to make a complaint, and anyone else involved in conduct and disciplinary matters.

The Secretary is also responsible for providing regular progress updates to the parties to the complaint. When handling complaints on behalf of another Advisory Committee, the Secretary assumes responsibility for providing updates to the parties on the progress of the complaint/investigation until the point where the matter is referred to the JCIO under Part 5 for handling.

If the complaint is not upheld, the Secretary should inform the complainant of the outcome and, if they are aware of the complaint, the magistrate. The Secretary should also inform the parties of their right to complain to the Judicial Appointment and Conduct Ombudsman if they are unhappy about the way in which the complaint has been handled. (See paragraph 11).

The Advisory Committee Secretary is responsible for providing advice on the rules and application of natural justice in addition to administrative support to conduct panels. The Secretary may assist a conduct panel with the drafting of any report, reasons and recommendations.

#### *5. Bench Chairmen*

Bench Chairmen have a pastoral role. They derive their responsibility for dealing with pastoral matters from the Lord Chief Justice, who, as President of the Courts of England and Wales, is responsible for the arrangements for the welfare, training and guidance of the judiciary of England and Wales. Detailed guidance on the role of the Bench Chairman has been produced by Judicial Office and can be found in the booklet entitled "*Directions to Bench Chairmen*". (Copies are available from Judicial Office).

Bench Chairmen do not deal with conduct matters and have no authority to take disciplinary action. Disciplinary action can only be taken by the Lord Chancellor and the Lord Chief Justice.

Matters of concern or complaints are, however, often raised with the Bench Chairman directly. If any aspect of a complaint could possibly amount to misconduct the complaint must be referred to the Advisory Committee to be dealt with in accordance with the rules. Guidance on what can appropriately be dealt with by the Bench Chairman as a pastoral matter is found in the 'Directions to Bench Chairmen'.

#### *6. The Judicial Conduct Investigations Office*

The JCIO supports the Lord Chancellor and the Lord Chief Justice in their joint responsibility for judicial discipline. The JCIO has a general oversight and advisory role in relation to the disciplinary process and may be contacted for advice on any issue relating to the operation and interpretation of the rules.

The Advisory Committee should advise the JCIO on a case-by-case basis, of any case where there is, or where there may be, wider public or media interest.

The Advisory Committee's report and recommendation are submitted to the Lord Chancellor and Lord Chief Justice through the JCIO - see Part 5 of the rules. At this stage, responsibility for progressing the matter transfers to the JCIO. The JCIO will then keep the Advisory Committee, the subject of the disciplinary proceedings and the complainant informed of progress of the matter. The JCIO will also have responsibility for ensuring that all parties are aware of the outcome.

#### *7. The Complainant*

The complainant is responsible for making their complaint in writing within three months of the matter complained of. The onus is on the complainant to be specific about the detail of their complaint, for complying with given timescales or requests for information made by the Advisory Committee.

#### *8. The Magistrate Concerned*

The magistrate who is 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.

If the magistrate decides to resign at any point during the conduct process (unless the matter is referred to a disciplinary panel or investigating judge) the Rules cease to apply and no further action should be taken - see Regulation 23.

#### *9. Investigating Judge*

If following receipt of a report from an Advisory Committee the JCIO considers that the matter is sufficiently serious or complex that a more detailed investigation is required, the JCIO may request that the matter is referred to an investigating judge for to investigate. Such a request must be considered by a nominated judge. If the nominated judge agrees to the request the complaint will be referred to an investigating judge. Alternatively, the Lord Chancellor and Lord Chief Justice may request further investigation and an investigating judge may be appointed to carry out further enquiries.

The Lord Chief Justice will nominate a judge to carry out the further investigation. 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.

#### *10. The Disciplinary Panel*

The Disciplinary Panel is convened when: an Advisory Committee 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 is formed of four members, two judicial and two lay members. Of the judicial members, the chairman of the panel will be of senior rank to the subject of the disciplinary proceedings and the second will be of the same rank. The Lord Chief Justice nominates the judicial panel members. Lay members are appointed by the Lord Chancellor with the agreement of the Lord Chief Justice via a selection process.

The disciplinary panel will consider and review evidence, representations and the Advisory Committee's recommendation. Where appropriate, the panel will hear 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.

#### 11. *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 the Ombudsman is satisfied that the grounds of the complaint of maladministration are justified he may make recommendations to the Lord Chancellor and the Lord Chief Justice. If Ombudsman considers any decision on the complaint about a judicial office holder 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 the complaint. Further information about the Ombudsman's role can be found at [www.justice.gov.uk/about/jaco/how-to-make-a-complaint](http://www.justice.gov.uk/about/jaco/how-to-make-a-complaint)

#### **Magistrates' Competence**

The assessment of magistrates' competence is a matter for Training and Development Committees. Annex A details the procedure which must be followed (but which does not form part of the Judicial Conduct (Magistrates) Rules 2014) where an allegation of lack of competence arises and before the Lord Chancellor will consider removing a magistrate for failing to meet standards of competence as set out in section 11(2)(b) of the Courts Act 2003. That section provides that the Lord Chancellor may remove a magistrate "on the ground of a persistent failure to meet such standards of competence as are prescribed by a direction given by the Lord Chancellor with the concurrence of the Lord Chief Justice."

#### **Confidentiality - Section 139 of the Constitutional Reform Act 2005**

Section 139 of the Constitutional Reform Act (CRA 2005) 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 purpose 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]*

## Guidance to the Rules

### Authority of the Committee

**Rule 3** makes it clear that the rules apply to all magistrates, including those on the supplemental list.

**Rule 5** allows the Chairman of the Advisory Committee to delegate the handling of a complaint to members of the committee to act on their behalf. The ability to delegate the role to a trained member of the Advisory Committee may assist to spread the workload of dealing with complaints.

**Rule 7** extends the ability to delegate the handling of a complaint to another Chairman of an Advisory Committee if necessary. For example, where they may be a question of a conflict of interest.

### The Complaint:

**Rules 9 & 10** An Advisory Committee may only consider a complaint that contains an allegation of personal misconduct by a magistrate. Misconduct is not defined in the rules. The OED definition is 'Instances of unacceptable or improper conduct or behaviour'.

In the context of the rules personal misconduct relates to the magistrate's behaviour. Some examples of misconduct are a magistrate shouting or speaking in a sarcastic manner in court, breaching the declaration and undertaking or misuse of judicial status outside of court. Personal misconduct does not relate to how the JP has managed a case or hearing or, to any decisions or judgments made in the course of court proceedings; such matters would be addressed through the appellate process.

The Directions for Bench Chairmen, the declaration and undertaking signed by magistrates and the Guide to Judicial Conduct are a useful point of reference on determining whether a matter may be one of potential misconduct.

Where a complaint does not contain an allegation of misconduct the Advisory Committee must advise the complainant that it cannot accept the complaint for investigation under these rules. In explaining this, full reasons for rejecting the complaint should be given to the complainant to help the basis for the decision.

Where a rejected complaint raises issues that may need to be addressed through training or informal guidance, the Advisory Committee Chairman may refer the complaint to the Bench Training and Development Committee or to the Bench Chairman to deal with as part of his pastoral responsibilities. (**See rules 24 and 31 (d)**).

### 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 team in the Judicial Office is able to provide advice and support in respect of the internal grievance process.

**Rule 12:** Complaints must be made to the Advisory Committee or its Secretary 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.

The complaint must contain an allegation of misconduct on the part of a named judicial officer holder. If it does not, or no details of when the incident occurred or no contact details are given for the complainant then the complaint should not be accepted.

**Rule 14:** 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 magistrate concerned and to anyone who may be able to assist with the investigation. Complaints will not be accepted by the Advisory Committee where the complainant states that they do not want their identity disclosed to the magistrate concerned. However, the Advisory Committee Chairman retains a power to investigate under rule 146 where justified.

**Rules 17 & 18:** Where a complaint is made outside the three month time frame, the complainant must be informed and invited to request an extension by setting out their reasons for the delay and why it should be accepted. A request to extend the time limit for lodging a complaint must be made in writing to the Advisory Committee, and must set out clearly the reasons why it was not possible to lodge the complaint with the Advisory Committee within three months of the alleged misconduct.

**Rules 18 - 21:** The Chairman to the Advisory Committee may only extend the time limit if 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. The Chairman will need to assess whether any reasons given by the complainant demonstrate that the complainant was either unable to or prevented from making a complaint in time. The Chairman should also assess whether it would be fair and proportionate to consider the complaint outside the timeframe.

If the time limit is extended, a record must be kept of this decision and if the complaint progresses to a full investigation the judicial officer holder concerned should be made aware the reasons why the complaint has been accepted for consideration.

**Rules 24 & 25:** Once a complaint has been accepted (on the basis that it meets the criteria set out in Rules 9 - 14) the Advisory Committee Chairman must consider whether the complaint contains an allegation of misconduct. The Chairman can decide at this stage whether he/she finds there is no misconduct and refer the matter straight to the relevant Bench Chairman, where appropriate, as a training or pastoral matter.

The Advisory Committee Chairman may wish to consult the Advisory Committee Secretary and/or the Bench Chairman before reaching a decision.

Whilst all complaints about magistrates should be sent to the Advisory Committee, it is possible that a complaint may be made directly to a Bench Chairman. In such circumstances the Bench Chairman must, in accordance with their 'Directions' consult the Advisory Committee Secretary as to whether the matter should be referred to the Advisory Committee Chairman or whether it may be dealt with as a pastoral matter.

Where the matter is referred to the Bench Chairman to deal with as a pastoral matter the designated person may request that the Bench Chairman notifies the committee and complainant when the matter is satisfactorily dealt with.

**Rule 26:** In the event the Chairman to the AC does not refer the matter to the Bench Chairman at this stage, he/she should consider what action to take under Rule 31. It is also possible for the Chairman to delegate this decision to the Advisory Committee.

**Rule 27:** This rule allows the Chairman or the Advisory Committee to make further enquiries before deciding what action to take with the complaint. This could involve writing to the complainant for further information, requesting third party statements or considering any relevant guidance. Where any enquiries are required, other than asking the complainant for further information to particularise their complaint, the AC Secretary should advise the magistrate of the complaint before any other action is taken and notify the Bench Chairman in accordance with Rule 29. The magistrate concerned is not required to provide representations at this stage as it the decision to refer the matter to a conduct panel may not have been made. However, they magistrate can be asked to comment or provide an account of events if it will help with the assessment.

**Rule 30:** The Advisory Secretary will be able to refer the Advisory Committee to relevant guidance or seek advice from the JCIO.

**Rule 31:** This rule sets out the options available to the Chairman of the AC, or the AC if delegated to take the decision, following the initial assessment of a complaint or following any further enquiries made under Rule 27. Rule 31 d) allows the Chairman, or the Advisory Committee, to refer the matter to a Bench Chairman to be dealt with pastorally after further enquiries have been made.

**Rule 32:** Rule 32 can only be applied if a complaint has been accepted as a valid complaint. A complaint cannot be rejected under Rule 32, it can only be dismissed for any of the specific reasons set out in subsections a) - l). A decision to apply Rule 32 can be made after the initial assessment of a complaint or following an investigation. Guidance on how the subsections may be applied is set out below.

**Rule 32 (a)** A complaint can be dismissed under this rule if the complainant has failed to provide sufficient information to enable an investigation. In setting out the complaint the complainant should provide sufficient detail about the allegation to allow the Chairman to determine what action should be taken. For example a complaint which simply states that a magistrate was rude is not adequately particularised. The complainant would need to provide examples of what the magistrate said or did for them to believe that the magistrate was behaving inappropriately. It would also be reasonable to ask the complainant at which part of the hearing this occurred to help identify when the alleged incident took place.

**Rule 32 (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, which evidence should be heard and the judgment or sentence given. However, the manner in which the magistrate conducted themselves can amount to misconduct, for example if the magistrate was rude or abusive or failed to exercise a fundamental responsibility

such as a failure to accept the decision of the majority of the bench or falling asleep on the bench.

**Rule 32 (d)** In many cases vexation is inferred from a pattern of past complaints and the absence of reasonable cause. The previous complaints would not all necessarily need to be about the magistrate in question to qualify as vexatious. If a complainant is prolific and has a history of groundless complaints that fall to be rejected or dismissed the Chairman could take the view that it would be disproportionate to consider any new complaint on the basis that it is highly likely to be dismissed for the same reasons as given in earlier dismissals. OED definition: Instituted without sufficient grounds for the purpose of causing trouble or annoyance.

**Rule 32 (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 32(f):** A complaint may be dismissed under this rule where it is clear that even if the facts complained of had occurred, the actions or behaviour would not warrant disciplinary action being taken against them.

**Rule 34:** Where there is a dispute on the facts it is important that a thorough investigation is conducted and evidence taken from anyone who is likely to be able to give direct evidence. Care should be taken not to make assumptions about what witnesses may or may not say in deciding whether to request their assistance. Concerns about embarrassment or highlighting potential issues to parties should not prevent evidence being sought from witnesses. As explained in Rule 27 above, if any investigative action is to be taken, such as contacting witnesses, the magistrate concerned should be informed of the complaint and what steps are being taken.

**Rule 35(b):** The Lord Chief Justice has directed that judicial office holders need not be troubled with complaints that can be dismissed under rule 32 without further investigation. It is possible therefore that the subject of the complaint will be unaware that a complaint has been lodged with the Advisory Committee and would not therefore need to be informed under this rule. The Advisory Committee should, however, contact the magistrate if they are to make further enquiries under rule 27. In these circumstances the Advisory Committee will inform the magistrate if the complaint is dismissed. The Advisory Committee will always consider whether there is merit in referring a dismissed complaint to the magistrate and Bench Chairman as a pastoral matter.

**Rule 41:** Where the Advisory Committee considers it possible that the circumstances of a complaint might bring magistracy into disrepute, or the magistrate's own integrity, authority or standing may be called into question it may be appropriate for the magistrate to abstain from all their magisterial duties until the complaint has been resolved. Some examples of when it might be pertinent to ask a magistrate to voluntarily refrain from their magisterial duties would be if the alleged misconduct is so serious that it may result in the magistrate being removed from office or the matter has attracted significant media attention and could affect public confidence in the judiciary. In such circumstances the Advisory Committee may ask the Bench Chairman to invite the magistrate to refrain from their duties until the conclusion of the investigation. Refraining from duties includes all aspects of the role, such as attending training or meetings; it does not just mean abstaining from sitting on cases. Consideration may be given to asking the magistrate to refrain from sitting in certain jurisdictions only if the complaint is only relevant to that duty, e.g. chairmanship or family. The Magistrates Association has indicated that refraining from magisterial duties extends to any functions relating to the Association.

If the magistrate does not agree to refrain from sitting, the Advisory Committee may refer the matter to the JCIO with a request for the Lord Chancellor and the Lord Chief Justice to formally suspend the magistrate from office pending the outcome of the investigation in accordance with Regulation 17. The Lord Chief Justice with the agreement of the Lord Chancellor, may also suspend a magistrate from their duties independently of any consideration by the Advisory Committee.

**Rule 43:** The summary process is invoked in the circumstances described at 43 (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 43 (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. The Advisory Committee should satisfy itself that the Bench Chairman has appropriate arrangements in place to monitor and record sitting and that magistrates are regularly kept informed of their actual sittings undertaken. The Judicial Office has issued guidance to the Bench Chairmen on monitoring sittings.

**Rule 44:** The Advisory Committee 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 51:** In providing a copy of the report to the Lord Chancellor and Lord Chief Justice the Advisory Committee must ensure that copies of any documentation and evidence relied upon in making the recommendation to remove from office are annexed. For example, any letters sent to the magistrate informing them about their sitting record or any correspondence between the magistrate and the Bench about their difficulties in meeting the sitting requirement.

**Rule 53:** The panel should normally consist of: 1) A Chairman who may be the Chairman of the Advisory Committee or the Chairman's nominee, who must be a member of the Advisory Committee; 2) At least one member from a different bench (Where an Advisory Committee covers a single local justice area, one magistrate member must be drawn from a neighbouring Advisory Committee) 3) One member who is a non-magistrate member of the Advisory Committee.

In certain circumstances, e.g. where there is a potential conflict of interest, where the Advisory Committee has raised the complaint or where Advisory Committee members are party to the complaint, it may be appropriate for the investigation to be conducted by a panel from a different Advisory Committee. Advice may be obtained from the JCIO as to when a transfer may be appropriate. The JCIO can also assist with locating a suitable alternative Advisory Committee.

If it is necessary to transfer a case to a different Advisory Committee, the Secretary should write to the parties to the complaint and the Bench Chairman to inform them of the decision to transfer and the date of transfer. Once the case has been transferred the Secretary of the new Advisory Committee should contact the parties and thereafter provide updates to the parties to the complaint on the progress of the

case. Where it is difficult to constitute a panel from within the Committee within proposed timescales other Committees may be asked to assist with members.

**Rule 54:** There will be occasions when the Advisory Committee Secretary feels that there is conflict between his or her day to day role (e.g. as Justices' Clerk) and providing support to a particular investigation. In such an instance, it would be appropriate to arrange for either a Sub-Committee Secretary or a Secretary to a neighbouring Advisory Committee to take on the task or for the matter to be transferred to another Committee. It is important to take all reasonable steps to avoid allegations arising from a perception that the panel's inquiry and conclusions have been influenced by reason of any conflict of interest on the part of the Secretary.

It may also be appropriate to seek assistance from either a Sub-Committee Secretary or a Secretary to a neighbouring Advisory Committee where the Secretary is not available to provide administrative support within the time limit.

**Rule 56:** The Secretary should inform the parties to the complaint and the Bench Chairman of the progress of the investigation, and in any event, provide updates at monthly intervals. If the complaint has been referred for investigation by another Advisory Committee due to a conflict of interest, the Secretary should keep the Advisory Committee who referred the complaint updated on any progress.

**Rule 57:** It is important that the potential areas of misconduct are clearly identified in the letter informing the magistrate of the conduct panel. It is not permissible to raise new matters of complaint without notice at the panel. All information that the panel has considered should be provided to the magistrate in advance of the panel.

**Rule 58 and 63:** The panel may make further enquiries and seek out further evidence in advance of the conduct panel. The panel may ask for written evidence from witnesses or ask for witnesses to be interviewed and a written account of their evidence taken. It is important that at all times the magistrate is kept informed of enquiries being made and details of those from whom evidence is being sought. The results of any enquiries should be provided to the magistrate in good time for the panel.

**Rule 67 - 70:** It is recommended that the panel members meet in advance of the hearing to prepare for the hearing. The panel should consider whether it is necessary for witnesses to attend or whether the written evidence is sufficient. Where the panel is of the view that witnesses need not attend the justice should be given the opportunity to make representations to the Panel as to why they wish witnesses to attend. The panel may consider accommodating the needs of witnesses by arranging videolink.

**Rule 73 - 78:** The Chairman should ensure that a balance is struck between avoiding repetition and ensuring that the magistrate feels that he or she has been afforded a full opportunity to present his or her views. The panel should avoid 'cross-examining' the magistrate or witnesses. The Panel process is not adversarial; it is a fact-finding exercise. The Panel should explore issues through open questions where possible.

**Rule 80:** The discussion in respect of the report should begin by identifying the facts not in dispute. The disputed facts should then be isolated and the evidence in support and against them should be carefully weighed. The panel should decide, if possible, which version of the disputed facts they feel is best supported, noting the

reasons. Findings may be made on the balance of probabilities but where the panel is satisfied to a higher standard of proof it should say so.

**Rule 82 - 88:** On reaching a finding of misconduct in formulating its recommendations the conduct panel must bear in mind the sanctions available to the Lord Chancellor and the Lord Chief Justice and the fact that the Lord Chancellor and the Lord Chief Justice will have full regard to the independence of the judiciary when determining a complaint. The panel should explain why it believes a particular sanction is most appropriate to their findings. The Lord Chancellor will not remove a magistrate (with the Lord Chief Justice's agreement) unless he considers there is no acceptable alternative.

In making their recommendation, a conduct panel should have regard to all of the Lord Chancellor's and the Lord Chief Justice's powers, including the options of requiring a magistrate to receive further training, mentoring and/or appraisal through the relevant local arrangements. If the panel proposes to recommend such action, they should consider whether or not to recommend that the magistrate should be suspended until training, mentoring and/or appraisal has been completed. The Chairman or Secretary should also discuss any training or mentoring proposals with the Justices' Clerk or Chairman of the BTDC.

The panel should reconsider whether the magistrate should continue in their magisterial duties pending the conclusion of the process. The Panel may recommend an interim suspension if the magistrate does not accede to any request not to sit taken forward by the bench chairman. The Lord Chancellor and Lord Chief Justice are usually minded to only agree to interim suspension in the most serious cases. Therefore, the panel may wish to take this into consideration when deciding whether to submit a request.

A recommended structure for the report is available for use.

**Rule 90:** The parties to the complaint should be notified of that they may complain to the Judicial Appointment and Conduct Ombudsman if they are unhappy with the way the Advisory Committee has handled the complaint. It is advisable to use the standard paragraphs below:

"If you feel that we have not handled this complaint properly, you can complain to the Judicial Appointments and Conduct Ombudsman. Please note that the Ombudsman can only consider a complaint about the handling of this complaint he has no power to investigate the conduct issue itself.

The Ombudsman will be able to investigate your complaint about the handling of this complaint if you write to him within 28 days of notification of our decision. After that period, he will consider whether it is appropriate to investigate it. Further information about the Ombudsman and his remit for investigations can be found at [www.judicialombudsman.gov.uk](http://www.judicialombudsman.gov.uk). The Office of the Judicial Appointments and Conduct Ombudsman can be contacted in writing at 9<sup>th</sup> Floor, The Tower, 102 Petty France, London, SW1H 9AJ, by e-mail at [headoffice@jaco.gsi.gov.uk](mailto:headoffice@jaco.gsi.gov.uk) or by telephone on 020 3334 2900."

**Rule 91 – 94:** The decision whether it is appropriate to progress any pastoral advice and training pending the decision of the Lord Chancellor and Lord Chief Justice should be taken following advice from the JCIO.

When considering whether to recommend that a magistrate should receive further

training and/or coaching, the Advisory Committee must:

- make a realistic assessment, in consultation with the BTDC, as to whether training and/or coaching is likely to deliver the required changes to behaviour;
- ensure that any recommendation is in accordance with the nationally agreed competence framework for the magistrates' appraisal and training scheme;
- establish whether the BTDC has the resources and/or capacity to deliver the proposed training and/or coaching and, if the BTDC does not, to record this in the recommendation.

**Rule 103:** Where a recommendation of removal or suspension is made by the Panel the magistrate must be informed of their right to request a disciplinary panel. However, where there has been a judicial investigation (by an investigating judge under Part 6 of the Rules) there is no requirement to convene a disciplinary panel. In these circumstances the investigating judge's report will be sent directly to the Lord Chancellor and the Lord Chief Justice for consideration, regardless of the recommended sanction.

**Rule 143:** Under this rule the Chairman to the Advisory Committee has the power to treat any information received which suggests that disciplinary action may be appropriate as a complaint. The information does not have to be a formal complaint; the decision to investigate could be based on information such as a newspaper article or information provided by the Police or another professional body. Where a matter is taken forward without formal complaint the magistrate should be advised at the earliest opportunity and be given the opportunity to comment.

**Rule 148:** 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 Advisory Committee Chairman considers there is good reason to do so. A written record of any deferral should be maintained on file and the magistrate and complainant informed in writing advising on when the matter will be reviewed.

Regulation 23 of the Judicial Discipline (Prescribed Procedures) Regulations 2014 states that the conduct process must cease if a magistrate no longer holds office. Therefore, if the magistrate resigns during the process, including after the conduct panel has prepared its report, the Rules cease to apply and no further action should be taken. The exception to this rule is where the matter has already been considered by a disciplinary panel or investigating judge and they have recommended that the magistrate be removed from office. At this stage the matter can still be referred to the Lord Chancellor and Lord Chief Justice for them to consider whether to continue to make a finding of misconduct.

**August 2016**

## **ANNEX A**

### **ALLEGATIONS OF LACK OF COMPETENCE**

#### Procedure

1. The assessment of competence in Magistrates is a matter for Training and Development Committees ("BTDCs").
2. Where a TDC has concluded that a Magistrate has failed, over a period of time, to reach the required standard so as to call into question his or her capabilities to remain a Magistrate, it will instruct the Justices' Clerk to report the matter to the Advisory Committee.
3. The Justices' Clerk's report should take the form of a letter with supporting documentation that must include the appraiser's report.
4. Once a report is received from the Justices' Clerk the Advisory Committee must:
  - (a) satisfy itself that any review procedure has been properly followed;
  - (b) if so satisfied, make a formal recommendation for removal to the JCIO for consideration by the Lord Chancellor and the Lord Chief Justice; or
  - (c) if not satisfied, refer the report back to the Justices' Clerk with appropriate instructions for the TDC.
5. The Advisory Committee must not concern itself with the substance of the decision reached by the TDC; its task is to ensure proper procedures have been followed
6. The Advisory Committee should reach a decision under paragraph 4 within 5 business days of receiving the Justices' Clerk's report.