

The Judicial Conduct (Magistrates) Rules 2014

Coming into force - -

18th August 2014

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The Lord Chief Justice, in exercise of the powers conferred by sections 115 and 117 of the Constitutional Reform Act 2005, and regulation 7 of the Judicial Discipline (Prescribed Procedures) Regulations 2014 and with the agreement of the Lord Chancellor makes the following Rules:

PART 1

General

Citation and commencement

1. These Rules may be cited as the Judicial Conduct (Magistrates) Rules 2014 and come into force on 18th August 2014.

Interpretation

2.—(1) In these Rules—

“the Act” means the Constitutional Reform Act 2005;

“Advisory Committee” means one of the Lord Chancellor’s Advisory Committees on justices of the peace;

“bank holiday” means a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales;

“business day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales;

“case” means a complaint or issue of misconduct being considered under these Rules;

“Chairman of an Advisory Committee” has the meaning given in rule 4 and rule 7;

“complaint” means a complaint containing an allegation of misconduct by a magistrate;

“designated member of an Advisory Committee” means a member of an Advisory Committee who has been designated by a Chairman of an Advisory Committee under rule 5;

“disciplinary action” means—

(a) the exercise by the Lord Chancellor of the Lord Chancellor’ power to remove a magistrate from office under section 11 Courts Act 2003; or

(b) the exercise by the Lord Chief Justice of the Lord Chief Justice’ powers under section 108(3), (4)(b) and (c) and (5) of the Act;

“disciplinary panel” has the meaning given by regulation 11 of the Regulations;

“investigating judge” has the meaning given by regulation 10 of the Regulations;

“licensing body” means any body that licenses or regulates any profession;

“magistrate” means a justice of the peace who is not a District Judge (Magistrates’ Courts);

“magistrate concerned” means the magistrate whose conduct is being considered in accordance with these Rules;

“nominated judge” has the meaning given by regulation 9 of the Regulations;

“Regulations” means the Judicial Discipline (Prescribed Procedures) Regulations 2014;

“TDC” means a Training and Development Committee.

Judicial office holders to whom these Rules apply

3. These Rules apply to magistrates (including those on the supplemental list).

Chairman of an Advisory Committee

4. The Chairman of the Advisory Committee is the Chairman of the Advisory Committee for the local justice area to which the magistrate concerned is assigned under section 10(2) of the Courts Act 2003.

5. Subject to rule 6, the Chairman of the Advisory Committee may designate another member of that Advisory Committee to act on their behalf in relation to—

- (a) a specific complaint;
- (b) all complaints; or
- (c) a category of complaints.

6. A designated member of an Advisory Committee may not deal with a complaint about himself or herself.

7. Notwithstanding rule 4, the Chairman of an Advisory Committee may also ask another Advisory Committee to deal with a specific complaint when there is a good reason to do so. In such circumstances, references in these Rules to the Chairman of the Advisory Committee are to the Chairman of the Advisory Committee to which a complaint has been transferred.

8. Notwithstanding any designation under rule 5, the Chairman of an Advisory Committee may decide to deal personally with a specific complaint.

Making a complaint about judicial misconduct

9. A complaint must be made to the local Advisory Committee or its Secretary.

10. A complaint must contain an allegation of misconduct.

11. A complaint must be made in a complaint document unless the Chairman of the Advisory Committee agrees to accept a complaint in another form.

12. A “complaint document” is a document in writing which—

- (a) is legible;
- (b) contains an allegation of misconduct on the part of a named or identifiable magistrate;
- (c) states the date, or dates, the alleged misconduct took place; and
- (d) states the name and address of the person who is making the complaint.

13. A complaint document is to be accompanied by the originals or copies of all the documents within the control of the complainant to which he or she intends to refer.

14. The Advisory Committee or its Secretary must not accept a complaint in any case where the complainant states that they do not want the magistrate concerned to see a copy of the complaint document or of any document accompanying it.

Time limits within which a complaint must be made

15. A complaint must be made within three months of the latest event or matter complained of.

16. Subject to rule 18 (extension of time limits), the Advisory Committee or its Secretary must not accept a complaint if the complaint is made outside the time limit in rule 15.

17. The complainant must be informed—

- (a) that their complaint has not been accepted because it is out of time; and
- (b) that they may make representations within ten business days of the notification that their complaint is out of time to the Advisory Committee for an extension of the time limit.

Extension of time limits

18. The Chairman to the Advisory Committee may extend the time limit for making a complaint only in exceptional circumstances.

19. The fact that a complaint may contain an allegation of misconduct will not, by itself, be sufficient reason for the Chairman to the Advisory Committee to accept a complaint outside the three month time limit.

20. The Chairman to the Advisory Committee may extend or shorten any other time limit under these Rules, whether or not the time limit has expired, where there is good reason to do so.

21. Where the Chairman to the Advisory Committee has extended a time limit, it must—

- (a) inform the complainant and, if they are aware of the complaint, the magistrate concerned; and
- (b) keep a record of the reasons for the extension.

Measurement of time for doing an act

22. In these Rules the time for doing any act in response to a notification, invitation or request (“the document”) starts on the day that corresponds to the method of delivery used in relation to the notification, invitation or request shown in the table below-

Method of delivery	Starting day
First class post (or other method which provides for delivery on the next business day).	The second business day after the day on which the document was posted.
Second class post.	The third business day after the day on which the document was posted.
Delivering the document to or leaving it at a permitted address.	If it is delivered to or left at the permitted address on a business day before 4.30pm, that day; or if delivered at, or after, 4.30pm, the next business day.
Fax.	If the transmission of the fax is completed on a business day before 4.30pm, that day; or if transmitted at, or after 4.30pm, the next business day.
Other electronic method.	If an e-mail or other electronic transmission is sent on a business day before 4.30pm, that day; or if an e-mail or other electronic transmission is sent at, or after, 4.30p, the next business day.

PART 2

Assessment of complaint

Scope

23. This Part applies where—

- (a) a complaint is made to an Advisory Committee or its Secretary under rule 9;
- (b) the Lord Chancellor and the Lord Chief Justice refer a complaint to an Advisory Committee in accordance with regulation 13 of the Regulations;
- (c) no formal complaint has been made but the Chairman of an Advisory Committee decides to deal with a case under rule 146 (consideration of matter in absence of a complaint); or

- (d) the Ombudsman refers a case to an Advisory Committee to investigate under section 111(7)(b) of the Act.

Consideration of complaint

24. The Chairman of the Advisory Committee must initially consider whether an allegation of misconduct has been made by a complainant.

25. If not, they may refer the matter to the Bench Chairman to deal with as a pastoral or training matter.

26. Otherwise, the Chairman of the Advisory Committee must—

- (a) decide what action to take under rule 31; or
- (b) refer the complaint to the Advisory Committee to decide what action to take under rule 31.

27. For the purposes of deciding what action to take the Chairman of the Advisory Committee or the Advisory Committee may—

- (a) make such inquiries as they consider appropriate; or
- (b) request any documents which appear to be relevant to the complaint.

28. The Advisory Committee Secretary must—

- (a) where no referral is made under rule 25 to the Bench Chairman, inform the complainant whether their complaint is being considered by the Chairman of the Advisory Committee or the Advisory Committee; or
- (b) where a referral is made under rule 25 to the Bench Chairman, inform the complainant that their complaint is being dealt with as a pastoral or training matter by the Bench Chairman.

29. Where the magistrate concerned has been informed of the complaint, the Advisory Committee Secretary must send a copy of the complaint and any supporting documentation to the Bench Chairman.

30. Where the Advisory Committee considers the complaint, it must do so in consultation with the Advisory Committee Secretary.

Options when considering a complaint

31. The Chairman of the Advisory Committee or the Advisory Committee may—

- (a) dismiss the complaint in accordance with rule 32;
- (b) refer the complaint to a conduct panel in accordance with rule 36;
- (c) deal with the complaint in accordance with the summary process in Part 3 of these Rules;
or
- (d) where there has been no misconduct, refer the matter to the Bench Chairman to deal with as a pastoral or training matter.

Dismissal of complaint

32. The Chairman of the Advisory Committee or the Advisory Committee must dismiss a complaint, or part of a complaint, if it falls into any of the following categories—

- (a) it does not adequately particularise the matter complained of;
- (b) it is about a judicial decision or judicial case management, and raises no question of misconduct;
- (c) the action complained of was not done or caused to be done by a magistrate;
- (d) it is vexatious;

- (e) it is without substance;
- (f) even if true, it would not require any disciplinary action to be taken;
- (g) it is untrue, mistaken or misconceived;
- (h) it raises a matter which has already been dealt with, whether under these Rules or otherwise, and does not present any material new evidence;
- (i) it is about a person who is no longer a magistrate;
- (j) it is about the private life of a magistrate and could not reasonably be considered to affect their suitability to hold their judicial office;
- (k) it is about the professional conduct in a non-judicial capacity of a magistrate and could not reasonably be considered to affect their suitability to hold judicial office;
- (l) for any other reason it does not relate to misconduct by a magistrate.

Dismissal procedure

33. The Chairman of an Advisory Committee or an Advisory Committee may not dismiss a complaint under rule 32(a) unless the complainant has been given a reasonable opportunity to provide adequate details of the complaint. A complainant must provide any further details within 15 business days of the request for further details.

34. Where an account of facts given by a complainant differs from an account given by the magistrate concerned, the Chairman of the Advisory Committee or the Advisory Committee must consider any source of independent evidence which exists and which may help to verify the facts in dispute before it dismisses the complaint, unless to do so would be disproportionate in all the circumstances.

35. Where the Chairman of the Advisory Committee or the Advisory Committee dismisses a complaint under rule 32, they must inform—

- (a) the complainant of the dismissal and the reasons for it; and
- (b) if they are aware of the complaint, the magistrate concerned.

Referral to a conduct panel

36. The Chairman of the Advisory Committee or the Advisory Committee may refer a complaint to a conduct panel where—

- (a) the magistrate concerned accepts the misconduct alleged; or
- (b) the Chairman of the Advisory Committee or the Advisory Committee consider that it is appropriate to investigate the complaint further.

37. Where a complaint has been referred to a conduct panel it must be dealt with in accordance with Part 4 of these Rules.

Procedure to be followed before a referral is made to a conduct panel

38. Before a referral can be made to a conduct panel, the Chairman of the Advisory Committee or the Advisory Committee must—

- (a) provide the magistrate concerned with—
 - (i) details of the complaint;
 - (ii) any supporting documents; and
 - (iii) any information obtained by the Chairman of the Advisory Committee or the Advisory Committee when considering the complaint under this Part of the Rules;
- (b) invite the magistrate concerned to comment upon the complaint within 20 business days of the invitation to do so; and
- (c) consider any comments received from the magistrate concerned.

39. The Chairman of the Advisory Committee or the Advisory Committee can continue to refer the complaint to the conduct panel only if—

- (a) the magistrate concerned has provided comments within the time provided; or
- (b) the time has elapsed for providing comments and the magistrate concerned has not responded.

40. The Chairman of the Advisory Committee or the Advisory Committee must provide to the Bench Chairman a copy of the invitation made under rule 38(b) seeking comments from the magistrate concerned.

Interim suspension

41. Regulation 17 of the Regulations governs the procedure relating to the possible interim suspension of a Magistrate.

PART 3

Summary Process

Scope

42. This Part applies where the Chairman of the Advisory Committee or the Advisory Committee has decided under rule 31(c) to deal with a complaint in accordance with the summary process.

Summary process

43. The Chairman of the Advisory Committee or the Advisory Committee may advise the Lord Chancellor and the Lord Chief Justice that the magistrate concerned should be removed from office without further investigation where the magistrate concerned —

- (a) has been convicted in the United Kingdom of any criminal offence and has been sentenced to imprisonment, including a suspended sentence, as defined in section 189(7)(b) of the Criminal Justice Act 2003;
- (b) has been convicted elsewhere of any criminal offence which, if committed in any part of the United Kingdom would constitute a criminal offence, and has been sentenced to imprisonment, including a suspended sentence;
- (c) has been committed to prison for contempt of court (including a suspended committal order);
- (d) has been convicted in the United Kingdom of an offence involving dishonesty, deception, theft or perverting the course of justice;
- (e) has been convicted in the United Kingdom of a sexual offence or violent offence;
- (f) has been cautioned in relation to a criminal offence falling within sub-paragraphs (d) and (e) of this paragraph;
- (g) is an undischarged bankrupt or a person whose estate has had a sequestration awarded in respect of it and who has not been discharged;
- (h) is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order of like effect made in Scotland or Northern Ireland;
- (i) has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it;
- (j) is subject to—
 - (i) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986;

- (ii) a disqualification order or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002; or
- (iii) an order made under section 429(2) of the Insolvency Act 1986 (disabilities on revocation or administration order against an individual);
- (k) has failed to disclose information concerning their suitability to hold judicial office to—
 - (i) an Advisory Committee; or
 - (ii) the person who made their appointment,
 which they knew about before their appointment as a magistrate;
- (l) has at any time been subject to any investigation or proceedings concerning their fitness to practise by any licensing body, the final outcome of which was—
 - (i) the suspension of the magistrate concerned from a register held by the licensing body, and that suspension has not been terminated,
 - (ii) the erasure of the name of the magistrate concerned from a register held by the licensing body,
 - (iii) a decision that had the effect of preventing the magistrate concerned from practising the profession licensed or regulated by the licensing body, or
 - (iv) a decision that had the effect of only allowing the magistrate concerned to practise that profession subject to conditions, and those conditions have not been lifted;
- (m) has been removed from another judicial office in accordance with prescribed procedures;
- (n) has failed to comply without reasonable excuse with any sitting requirement specified by the Lord Chancellor;
- (o) is subject to any form of restriction or restraint in bringing proceedings before a court or a tribunal in any part of the United Kingdom.

Procedure

44. Before advice may be given under rule 43, the Chairman of the Advisory Committee or the Advisory Committee must give the magistrate concerned an opportunity to make representations as to—

- (a) whether the alleged ground took place; and
- (b) if so, why they should not be removed from their office.

45. The magistrate concerned must provide the representations referred to in rule 44 within 15 business days of the request for them.

46. The Chairman of the Advisory Committee or the Advisory Committee can continue to provide advice under rule 43 only if—

- (a) the magistrate concerned has provided representations within the time allowed; or
- (b) the time allowed for providing representations has elapsed and the magistrate concerned has not provided any representations.

Report

47. The Chairman of the Advisory Committee or the Advisory Committee must prepare a report if they intend to advise the Lord Chancellor and the Lord Chief Justice under rule 43.

48. The report must state—

- (a) that one or more of the grounds in rule 43 applies and why; and
- (b) any representations provided by the magistrate concerned under rule 45.

Reporting procedure

49. Rule 50 applies where a report is prepared by a member of the Advisory Committee who has been designated by the Chairman of an Advisory Committee under rule 5.

50. The designated member of the Advisory Committee must submit a draft of their report to the Chairman of the Advisory Committee. The Chairman of the Advisory Committee must consider whether to change the report and communicate any changes to the designated member. The designated member must accept those changes and produce a final report.

51. The Chairman of the Advisory Committee or the Advisory Committee must provide the report to—

- (a) the Lord Chancellor and the Lord Chief Justice;
- (b) the magistrate concerned.

PART 4

Conduct Panel

Scope

52. This Part applies where—

- (a) the Chairman of an Advisory Committee or an Advisory Committee refers a complaint to a conduct panel under rule 36; or
- (b) the Ombudsman refers a case to a conduct panel under section 111(7)(b) of the Act.

Composition of a conduct panel

53. An Advisory Committee conduct panel must be comprised of three members drawn from the Advisory Committee or another Advisory Committee. If this is not possible members may be drawn from a Sub-Committee of the Advisory Committee.

The role of the Advisory Committee Secretary

54. The Advisory Committee Secretary (or a nominee) will normally provide administrative support to a conduct panel. The Advisory Committee Secretary may not be a member of the panel and, whilst they may advise the panel on the application of these Rules and on the principles of natural justice, the Advisory Committee Secretary may not take part in a panel's deliberations on the merits of the case. The panel must retain a note of any advice which the Secretary has provided.

55. The Advisory Committee Secretary may assist with the drafting of any report, reasons and recommendations.

56. The Advisory Committee Secretary must keep the complainant and the Bench Chairman notified of the progress of the complaint. In particular, the Advisory Committee Secretary must inform the complainant and the Bench Chairman of decisions made in relation to a complaint as they occur, and in any event, provide updates at regular intervals.

57. The Advisory Committee Secretary must write to the magistrate concerned on behalf of the Chairman of the Advisory Committee inviting the magistrate concerned to attend a conduct hearing. The letter must:

- (a) set out all of the issues under consideration;
- (b) inform the magistrate concerned of their right to be accompanied at the hearing;

- (c) request their written representations on any records on their file relating to previous conduct matters which may be taken into account by the conduct panel if the complaint is substantiated;
- (d) where the conduct panel is investigating the complaint further—
 - (i) ask for details of any third party whom the magistrate concerned wishes to provide evidence on their behalf; and
 - (ii) invite the magistrate concerned to submit statements from anyone able to provide evidence on their behalf; and
- (e) where the magistrate concerned accepts the misconduct alleged—
 - (i) advise the magistrate concerned that a conduct panel will be convened to make recommendations to the Lord Chancellor and the Lord Chief Justice on the admitted facts of the complaint; and
 - (ii) inform the magistrate concerned of their right to make written or oral representations to the panel before they make their recommendations.

Procedure

58. The conduct panel may—

- (a) make such inquiries that it considers are appropriate to fulfil its functions;
- (b) request any documents which appear to be relevant to the complaint.

59. But any records on the files of the magistrate concerned must not be shown to the conduct panel unless the panel decide that the complaint is substantiated.

60. Unless rule 61 applies, a conduct panel must take oral evidence from the magistrate concerned. The hearing must be conducted in accordance with rules 67 to 78.

61. Where the magistrate concerned fails, without good reason, either to agree a hearing date or to attend a conduct panel hearing which has been arranged, the conduct panel must consider the case on the papers along with any evidence provided under rule 76.

62. A record must be made of the conduct panel's reasons for proceeding in the absence of the magistrate concerned.

63. A conduct panel may take evidence, including oral evidence, from any other person.

64. Any evidence obtained under rule 63 must be disclosed to the magistrate concerned. A hearing under rules 67 to 78 may only proceed where the magistrate concerned has been given a reasonable opportunity to consider such evidence.

65. If the magistrate concerned requires more time to consider evidence disclosed to them under rule 66 before a hearing then the hearing must be adjourned.

66. The panel must consider, in consultation with the Bench Chairman and the Justices' Clerk, whether it is appropriate for the magistrate concerned to abstain from duties where they have failed to provide written comments, agree a hearing date or attend a conduct hearing.

Hearings

67. Each member of the conduct panel must be in possession of a copy of the complaint, the response (if any) from the magistrate concerned and any other written evidence.

68. Subject to rule 76, the conduct panel must not have seen, heard or be in possession of evidence that has not been disclosed to the magistrate concerned.

69. The Advisory Committee Secretary must arrange for a full and accurate note of the proceedings to be taken.

70. The substantive part of the hearing must begin with the magistrate concerned being asked whether they agree wholly or in part with the facts as set out in the papers.

71. The facts must be checked chronologically, if possible, separating those which are agreed from those which are disputed, and following up the latter with appropriate questions.

72. The magistrate concerned must be invited to answer any questions raised.

73. Follow up questions may be asked when the magistrate concerned has responded to the initial questions.

74. Subject to rule 75, any person providing evidence to the panel must attend only for the purposes of giving evidence and must not be present during any other part of the proceedings. They may be accompanied, while giving evidence, but unless there are wholly exceptional circumstances, they must speak for themselves.

75. The magistrate concerned must be given the opportunity to hear any evidence given to the conduct panel and be invited to comment on that evidence after a person giving such evidence has finished and in their presence.

76. But where the magistrate concerned has been informed that a witness will be asked to attend a conduct panel hearing to provide evidence and the magistrate concerned does not attend the hearing, the conduct panel may hear from that witness in the absence of the magistrate.

77. The conduct panel Chairman may wish to follow-up any issues which require clarification.

78. When this process has finished, the magistrate concerned must be asked if there is anything in conclusion which they wish to say to the panel.

Conduct panel report

79. The conduct panel must prepare its report setting out:

- (a) the details of the complaint;
- (b) a summary of the evidence presented;
- (c) findings of fact made by the conduct panel;
- (d) a full explanation of the panel's reasoning; and
- (e) a clear statement of its recommendations.

80. The conduct panel must complete its report within ten business days of the hearing.

81. If the conduct panel concludes that there has been misconduct—

- (a) the Advisory Committee Secretary must put before the conduct panel any relevant records relating to other conduct matters brought to the magistrate's attention in the past, together with any written representations made by the magistrate about the accuracy of the record; and
- (b) the panel must then move on to consider what advice it will offer to the Lord Chancellor and the Lord Chief Justice on whether disciplinary action should be taken, and if so what.

Reporting procedure

82. Rules 83 to 86 apply where the conduct panel recommends that disciplinary action should be taken.

83. The conduct panel must send a copy of its report and note of the hearing to the magistrate concerned and invite the magistrate concerned to make representations upon the report.

84. When sending the report to the magistrate concerned and where the report recommends removal or suspension from office, the relevant Advisory Committee must ask the magistrate concerned if they want the matter referred to a disciplinary panel to consider.

- 85.** The magistrate concerned may within 15 business days of receipt of the report—
- (a) provide comments on the report to the relevant Advisory Committee;
 - (b) make representations to the relevant Advisory Committee regarding the need for further investigation into the matter;
 - (c) where the report recommends removal or suspension from office, state whether they want a disciplinary panel to consider the complaint.

86.—(1) The Advisory Committee must inform the Judicial Conduct Investigations Office of any request from the magistrate concerned to have their matter referred to a disciplinary panel.

(2) The conduct panel must send a copy of the report to the Judicial Conduct Investigations Office and to the Chairman of the Advisory Committee together with a copy of—

- (a) the complaint;
- (b) the representations (if any) from the magistrate concerned;
- (c) any other written evidence considered by the panel; and
- (d) a full and accurate note of the hearing.

87. The Bench Chairman, the Justices' Clerk and the complainant must be informed that the panel's report has been sent to the Judicial Conduct Investigations Office.

88. Where the conduct panel decides to dismiss a complaint, the conduct panel must send a draft of its report to the Chairman of the Advisory Committee together with—

- (a) the complaint;
- (b) any other written evidence considered by the panel; and
- (c) a full and accurate note of the hearing.

89. If the Chairman of the Advisory Committee makes a proposal that the conduct panel's report should be changed, the conduct panel must consider whether or not to change it to give effect to that proposal.

90. If the Chairman of the Advisory Committee agrees that the complaint should be dismissed, the conduct panel must—

- (a) inform the Bench Chairman of its decision;
- (b) send a copy of its report to the magistrate concerned; and
- (c) inform the complainant of its decision.

91. If the complaint raises any pastoral or training issues, the conduct panel must always consider whether to refer those issues to the Bench Chairman and/or the Chairman of the TDC as appropriate.

92. When considering whether a complaint raises pastoral or training issues, the conduct panel may seek advice from the Judicial College.

93. The Justices' Clerk must be consulted and kept informed of any referral under rule 91.

94. Any correspondence with the Bench Chairman or the TDC Chairman must be copied to the magistrate concerned.

PART 5

The role of the Judicial Conduct Investigations Office

Scope

95. This Part applies where a conduct panel has sent its report to the Judicial Conduct Investigations Office in accordance with rule 86.

The role of the Judicial Conduct Investigations Office

96. On receipt of the report from the conduct panel the Judicial Conduct Investigations Office must examine the papers to ensure that—

- (a) all the information necessary for the Lord Chancellor and the Lord Chief Justice to make a decision has been obtained; and
- (b) the procedure set out in these Rules and in the Regulations has been followed.

97. Where procedures have not been followed, the Judicial Conduct Investigations Office may remit the case back to the Advisory Committee Secretary with advice as to further action.

Referral to an investigating judge

98. Where the Judicial Conduct Investigations Office considers that a complaint is sufficiently serious or complex, or that a more detailed investigation is required to establish the facts of a complaint, the Judicial Conduct Investigations Office may request that a complaint is referred to an investigating judge to investigate in accordance with Part 6.

99. A request under rule 98 must be considered by a nominated judge.

100. If a nominated judge agrees to the request, then the complaint must be referred to an investigating judge to consider in accordance with Part 6.

101. If a nominated judge disagrees with the request, then the Judicial Conduct Investigations Office must—

- (a) refer the case back to the Advisory Committee Secretary in accordance with rule 97;
- (b) refer the case to a disciplinary panel in accordance with rules 103 to 105; or
- (c) provide the conduct panel report to the Lord Chancellor and the Lord Chief Justice in accordance with rule 106.

102. Where a complaint is referred to an investigating judge, the Judicial Conduct Investigations Office must—

- (a) inform the magistrate concerned and the complainant that the complaint has been referred to an investigating judge;
- (b) provide the report of the conduct panel together with any representations received from the magistrate concerned under rule 85 to the investigating judge.

Referral to a disciplinary panel

103. Where the magistrate has requested that their case be referred to a disciplinary panel to consider, the Judicial Conduct Investigations Office must—

- (a) refer the complaint to a disciplinary panel to consider in accordance with Part 7 of these Rules;
- (b) send the report of the conduct panel to the disciplinary panel together with any representations received from the magistrate concerned under rule 85; and
- (c) inform the magistrate concerned and the complainant that the complaint has been referred to a disciplinary panel.

Referral to the Lord Chancellor and the Lord Chief Justice

104. Where the circumstances in rule 105 apply, the Judicial Conduct Investigations Office must send the conduct panel report and any representations received from the magistrate concerned under rule 86 to the Lord Chancellor and the Lord Chief Justice.

105. The circumstances referred to in rule 104 are—

- (a) where—

- (i) the report of the conduct panel recommends that some disciplinary action, other than removal or suspension, should be taken; or
 - (ii) the report of the conduct panel recommends that the magistrate concerned should be removed or suspended from office and the magistrate concerned has not confirmed that they want a disciplinary panel to consider the complaint under rule 103; and
- (b) no referral has been made to an investigating judge under rule 100.

PART 6

Judicial Investigation

Scope

106. This Part applies where a referral is made to an investigating judge—

- (a) by the Judicial Conduct Investigations Office under rule 100; or
- (b) by the Lord Chief Justice and Lord Chancellor under regulation 13 of the Regulations; or
- (c) by the Ombudsman under section 111(7)(b) of the Act.

Nomination of investigating judge

107. The investigating judge must be nominated in accordance with regulation 10 of the Regulations.

Investigation by an investigating judge

108. The investigating judge must—

- (a) determine the facts of a case;
- (b) determine whether in the facts amount to misconduct; and
- (c) advise as to whether disciplinary action should be taken and if so what.

109. Any question as to whether a fact is established must be decided on the balance of probabilities.

110. The investigating judge must—

- (a) decide how to conduct the investigation;
- (b) notify the magistrate concerned and any complainant of the proposals for the conduct of the investigation, and whether oral evidence will be taken;
- (c) invite the magistrate concerned to give evidence and make representations about the procedure adopted; and
- (d) record any representations on the proposals that are received.

111. The investigating judge may invite the complainant or any person who may be able to assist the investigation to give evidence about the case.

112. Any evidence or representations from the complainant, the magistrate concerned or any other person must be provided to the investigating judge within ten business days of an invitation under rules 110(c) or 111.

113. The investigating judge may take oral evidence if it is considered necessary to do so.

114. The investigating judge must disclose any evidence obtained under rule 111 to the magistrate concerned and must invite the magistrate concerned to make representations about the evidence.

115. The magistrate concerned must make any representations under rule 114 within ten business days of the invitation under that rule.

Report of investigating judge

116. The investigating judge may decide the form of their report.

117. The investigating judge must disclose a draft of their report to the magistrate concerned and invite the magistrate concerned to comment on it. The comments may include proposals for changes to the report.

118. The investigating judge may show a draft of their report to any other person, and invite them to comment upon it.

119. Disclosure of the draft report under rule 118—

- (a) may be of the whole or part,
- (b) may be in the form of a summary, and
- (c) must omit any information the disclosure of which is prohibited under section 139 of the Act (confidentiality).

120. Any comments must be provided to the investigating judge within ten business days of disclosure of the draft report under rules 117 and 118.

121. After considering any comments received in accordance with rules 117 and 118 the investigating judge must—

- (a) complete their report and submit it to the Lord Chancellor and the Lord Chief Justice with details of any requested changes which the investigating judge has not made.
- (b) send a copy of their report to the magistrate concerned; and
- (c) send a copy of their report or the relevant part of it to any other person who has been invited to comment upon it, but omitting any material the disclosure of which is prohibited under section 139 of the Act (confidentiality).

PART 7

Disciplinary panel

Scope

122. This Part applies where—

- (a) the Judicial Conduct Investigations Office refers a complaint to a disciplinary panel under rule 103;
- (b) the Lord Chancellor and Lord Chief Justice have referred a complaint to a disciplinary panel under regulation 13 of the Regulations;
- (c) the Ombudsman refers a case to a disciplinary panel to investigate under section 111(7)(b) of the Act; or
- (d) a referral is made under rule 140(b)(ii).

Disciplinary panel

123. The disciplinary panel must be convened in accordance with regulation 11 of the Regulations.

Functions of a disciplinary panel

124. A disciplinary panel may consider and review—

- (a) any findings of fact;
- (b) any finding as to the conduct of the magistrate concerned; and
- (c) any proposed disciplinary action.

125. Where a disciplinary panel reviews any findings of fact under rule 124(a), any question as to whether that fact is established must be decided on the balance of probabilities.

126. Where a conduct panel has recommended that the magistrate concerned should be removed or suspended from their office, the disciplinary panel must advise the Lord Chancellor and the Lord Chief Justice whether removal or suspension is justified.

Procedure of disciplinary panel

127. The disciplinary panel may—

- (a) make such inquiries as it considers are appropriate to fulfil its functions;
- (b) request any documents which appear to be relevant to the complaint.

128. A disciplinary panel must take oral evidence from the magistrate concerned unless it considers it unnecessary to do so.

129. A disciplinary panel may take evidence, including oral evidence, from any other person.

Report and recommendation

130. The disciplinary panel must prepare a report that sets out—

- (a) the facts of the case;
- (b) whether in its opinion there has been any misconduct; and
- (c) whether disciplinary action should be taken and if so what.

Report procedure

131. The disciplinary panel must send its draft report to the magistrate concerned.

132. The disciplinary panel may disclose its draft report to the complainant and any other person who may be affected by its contents.

133. Disclosure of the report under rule 132—

- (a) may be of the whole or part;
- (b) may be in the form of a summary;
- (c) must omit any information the disclosure of which is prohibited under section 136 of the Act (confidentiality).

134. The disciplinary panel must invite each person to whom it discloses its report to comment on it.

135. Any comments on the report must be made within ten business days of the day on which the report is sent out for comment.

136. In finalising its report the disciplinary panel—

- (a) must have regard to any comments received under rule 134;
- (b) must include those comments with its report.

137. The disciplinary panel must send its report to the Lord Chancellor and the Lord Chief Justice.

PART 8

Miscellaneous

Re-opening a case that has been dismissed

138. Exceptionally, a Chairman of an Advisory Committee may re-open a complaint that has been dismissed where they receive new information concerning that complaint.

139. For these purposes, new information means information which—

- (a) relates to judicial misconduct;
- (b) is cogent and credible;
- (c) has not already been considered under these Rules; and
- (d) is sufficiently serious to justify re-opening a complaint.

140. If a Chairman of an Advisory Committee decides to re-open a complaint, they may—

- (a) consider the complaint in accordance with Part 2;
- (b) refer the complaint to—
 - (i) another Chairman of an Advisory Committee to consider under Part 2; or
 - (ii) a disciplinary panel to consider in accordance with Part 7; or
- (c) request that the Judicial Conduct Investigations Office make a referral to an investigating judge in accordance with rule 100.

Procedure to be followed when re-opening a case

141. A Chairman of an Advisory Committee may re-open a case of their own volition.

142. A complainant may provide new information to the Chairman of an Advisory Committee.

Consideration of matter in absence of a complaint

143. Where a Chairman of an Advisory Committee receives no complaint but receives information from any source which suggests to them that taking disciplinary action might be justified they must consider that information as though it were a complaint and deal with it under these Rules with the exception that any obligation to be discharged in relation to a complainant does not apply.

Withdrawal of a complaint

144. A complainant may withdraw their complaint at any time.

145. Where a complaint is withdrawn, it may still be investigated if rule 146 applies.

146. A withdrawn complaint may continue to be investigated where it is being considered by—

- (a) a Chairman of an Advisory Committee or the Advisory Committee if the Chairman of an Advisory Committee or the Advisory Committee considers it appropriate to continue to investigate the complaint;
- (b) a conduct panel under Part 4 of these Rules if the conduct panel considers it appropriate to continue to investigate the complaint;
- (c) an investigating judge under Part 6 of these Rules if the investigating judge considers it appropriate to continue to investigate the complaint; or
- (d) a disciplinary panel under Part 7 of these Rules if the disciplinary panel considers it appropriate to continue to investigate the complaint.

147. Where rule 146 applies, the case is to continue to be considered under these Rules as if the complaint had not been withdrawn and the complainant must be informed of this decision by the Chairman of the Advisory Committee, the Advisory Committee, the investigating judge or the disciplinary panel as the case may be.

Deferral of consideration of a case

148. A Chairman of an Advisory Committee or an Advisory Committee may defer consideration of a case where there is good reason to do so.

149. Where consideration of a complaint is deferred, the Chairman of the Advisory Committee or the Advisory Committee must inform the complainant and, if they are aware of the complaint, the magistrate concerned.

Transitional provision

150. These Rules apply to any complaint made before these Rules come into force which has not been withdrawn, dismissed or determined.

Revocation

151. The Judicial Conduct (Magistrates) Rules 2013 are revoked.

Date Lord Chief Justice

I agree Lord Chancellor

Date