

The Judicial Conduct (Tribunals) 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 Chief Justices for England and Wales, Northern Ireland, and the Lord President of the Court of Session, with the agreement of the Lord Chancellor, set out the procedure for dealing with allegations of misconduct against tribunal members (as defined in rule 4).

Roles and Responsibilities

1. The Lord Chancellor and Relevant Chief Justice

The Lord Chancellor and the relevant Chief Justices share overall responsibility for ensuring that complaints of misconduct against tribunal members are properly investigated and determined in accordance with the Judicial Conduct (Tribunals) Rules 2014. The Lord Chancellor and the relevant 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 Tribunal Presidents, investigating judges; disciplinary hearing panel members and officials in the Judicial Conduct Investigations Office (JCIO).

2. The Complainant

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

3. The Subject of the Complaint

The subject of the disciplinary proceedings 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.

4. The President

The President has responsibility for dealing with complaints in accordance with the rules. A President may designate a suitable tribunal member to deal with a complaint, but overall responsibility remains with the President.

The President has responsibility for:

- i. investigating the facts of the complaint making a finding as to whether the alleged behaviour amounts to misconduct,
- ii. dismissing the complaint where no misconduct is found, or dealing with the complaint informally, outside of these rules, inline with his/her pastoral responsibilities.

- iii. preparing a report for the Lord Chancellor and the relevant Chief Justice with a recommendation as to any appropriate disciplinary action, where a finding of misconduct is made.
- iv. keeping the complainant and the subject of the disciplinary proceedings informed of progress of the investigation,
- v. maintaining appropriate records and disposing of them in accordance with the current record retention policy,
- vi. requesting an investigation by an investigating judge, where the matter is particularly complex.

Presidents should advise the complainant and the judicial office holder that the Judicial Conduct (Tribunals) Rules 2014 are available on the Judicial Conduct Investigations Office's web at: <http://judicialconduct.judiciary.gov.uk/> or may be obtained from the JCIO by telephoning: 020 7073 4740.

Where a complaint does not contain an allegation of judicial misconduct but the President considers that there are matters that should be brought to the tribunal office holder's attention, the President may deal with the matter as part of his or her pastoral responsibilities outside of these rules.

The President will keep parties informed of progress during the investigation of the complaint. Where a complaint is not upheld by the President they will advise the complainant and (if they are aware of the complaint) the judicial office holder, of the outcome and inform them of their right to complain to the Judicial Appointment and Conduct Ombudsman if they are unhappy with the way the complaint has been handled.(See paragraph 9 below).

5. The Judicial Conduct Investigations Office (JCIO)

The JCIO supports the Lord Chancellor and the relevant 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 President 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 President's investigation report and recommendation is sent to the Lord Chancellor and the relevant Chief Justice through the JCIO, as is any request for the appointment of an investigating judge. At this stage, responsibility for progressing the matter transfers to the JCIO which will then be responsible for keeping the President, the subject of the disciplinary proceedings and the complainant informed of progress of the matter.

6. The Nominated Judge

Nominated judges are appointed by the Lord Chief Justice with the agreement of the Lord Chancellor. Their main role is to make recommendations to the Lord Chancellor and the Lord Chief Justice in relation to the conduct of courts judiciary (similar to the role of the President) however, they also have specific responsibilities for aspects of the disciplinary process for tribunal judges, as set out in the rules and regulations.

7. Investigating Judge

Where a President considers that a case is particularly complex or serious or where the Lord Chancellor and the relevant 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 relevant Chief Justice with a recommendation as to whether the alleged behaviour amounts to misconduct and if so, what disciplinary sanction may be appropriate.

8. The Disciplinary Panel

The Disciplinary Panel is convened when: 1) a President has made a finding of judicial misconduct and recommended that the subject of the disciplinary proceedings be removed or suspended from office; or, 2) as directed by the Lord Chancellor and the relevant 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 disciplinary proceedings) and two lay members. The panel is responsible for reviewing the evidence, representations, the President's recommendation and where appropriate, for taking oral evidence from the subject of the disciplinary proceedings. The panel will prepare a report for the Lord Chancellor and the relevant Chief Justice with a recommendation as to whether the alleged behaviour amounts to misconduct and if so, what sanction may be appropriate.

9. 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 020 3334 2900.

10. 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]

11. Guidance to the Rules

Rule 17: A President may only consider a complaint under these rules where it contains an allegation of personal misconduct by a tribunal member. Personal misconduct relates to the member's behaviour for example: a judge shouting or speaking in a sarcastic manner in court; or misuse of judicial status. Personal misconduct does not relate to how the tribunal member has managed a case or hearing or, to any decisions or judgments made in the course of the proceedings. The only way to challenge such matters is through the appellate process.

Where a complaint does not contain an allegation of misconduct the President will inform the complainant why it cannot be dealt with under the disciplinary rules.

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 18: Complaints must be made to the President 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 21: 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 disciplinary proceedings and anyone else who may be able to assist with the investigation. Complaints will not be accepted by the President where the complainant states that they do not want their identity disclosed to the subject of the disciplinary proceedings.

Rule 25: A request to extend the time limit for lodging a complaint must be made in writing to the President, and must set out clearly the reasons why it was not possible to lodge the complaint with the President within three months of the alleged misconduct. The President may only extend the time limit where they are 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 34 (a) A complaint must set out all the details required under rule 19 and provide specific details about the alleged misconduct. For example a complaint which simply states that a judicial office holder was rude is not adequately particularised. In this example the complainant should say 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 34(b) The constitutional independence of the judiciary means that decisions made by a tribunal member 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 given.

Rule 34 (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 34(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 37 (b): The Lord Chief Justice has directed that tribunal members should not be troubled with complaints that can be dismissed under rule 34 without further investigation. It is possible therefore that the subject of the disciplinary proceedings will be unaware that a complaint has been lodged with the President and would not therefore need to be informed under this rule. The President will however contact the subject of the disciplinary proceedings if they are to make further enquiries, such as seeking third party statements. In these circumstances the President will inform the subject of the disciplinary proceedings if the complaint is ultimately dismissed under rule 34.

Rule 41: The summary process is invoked in the circumstances described at 35(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 these Rules.

Rule 41(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 42: The President 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 54 (c): Where a President makes no finding of judicial misconduct, but, he /she considers that the complaint raises issues that should be addressed with the tribunal member through pastoral support, advice or training, the President may deal with this as part of his pastoral responsibilities.

Rule 93: There is no requirement to convene a disciplinary panel following a judicial investigation which results in a recommendation for suspension or removal from office.

Rule 120: 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 President considers there is good reason to do so.