



GUIDANCE FOR HANDLING COMPLAINTS
AGAINST JUDICIAL OFFICE-HOLDERS
WITHIN TRIBUNALS

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1. PREAMBLE

1.1 WHY ARE COMMON COMPLAINTS PROCEDURES NECESSARY ?

It has long been recognised that institutions that serve the public should have a considered and effective approach to the handling of complaints. The judiciary has been no exception. The presidential¹ structure of many tribunals enables complaints against judicial office-holders within tribunals to be dealt with in a manner that is different from the way complaints about other judicial office-holders are handled. In the past, individual tribunals have designed and operated their own complaints protocols. However, the Constitutional Reform Act 2005 and the Judicial Discipline (Prescribed Procedures) Regulations 2006 require the way complaints against certain judicial office-holders are handled to be put on a more formal footing and one that has been agreed between the Lord Chancellor and the Lord Chief Justice of England and Wales (or, where the judicial office-holder sits wholly or mainly in Scotland or Northern Ireland, the Lord President of the Court of Session or the Lord Chief Justice of Northern Ireland, respectively)². As the principles underlying the handling of complaints should be consistent, a common set of rules, the Judicial Complaints (Tribunals) Rules 2006, has been made by the Lord Chief Justice of England and Wales, with the agreement of the Lord Chancellor and the two other Chief Justices. This Guidance explains how the Regulations and Rules³ are intended to work in practice.

1.2 THE PRINCIPLES BEHIND THE PROCEDURES

The principles that underpin the procedures are:

- 1.2.1 **Openness.** All sides must be given the opportunity to participate and express their views in respect of any complaints. No complaint will be recorded or investigated against a judicial office-holder without giving that office-holder the opportunity to comment on the reasons for the complaint. Information about the requirements for a complaint against a judicial office-holder and the process to be followed by a complainant will be publicised and incorporated into Tribunals Service (or equivalent) literature available at each hearing centre. This information will also be posted on the Tribunals Service website.
- 1.2.2 **Timeliness.** There is little value in a complaints scheme that does not resolve the complaint in a timely fashion. The ability of all parties to recall events accurately will also decrease with time. Therefore clear targets will be set for every stage of the process once a complaint has been received to ensure that complaints are dealt with as promptly as possible. However, if a complaint relates to an issue or issues which may be amenable to further appeals or where a case is ongoing, a response or, indeed, any investigation may have to be deferred until the case is concluded.
- 1.2.3 **Fairness.** Complaints should be dealt with consistently and the procedure must be fair to both the complainant and the judicial office-holder who is the subject of the complaint. This Guidance explains the processes and the standards to be used. All but the most serious or recurring complaints will be handled by the President of the

¹ In this Guidance, the term “President” refers to the senior judicial office-holder of a tribunal, as listed in column 1 of the Schedule to the Judicial Complaints (Tribunals) Rules 2006, or a person acting in his place under rule 11 or some other enactment.

² In this Guidance, the term “the relevant Chief Justice” is used to refer, as appropriate, the Lord Chief Justice of England and Wales, the Lord President of the Court of Session or the Lord Chief Justice of Northern Ireland.

³ In this Guidance, reference to a numbered regulation is to a provision in the Judicial Discipline (Prescribed Procedures) Regulations 2006 and a reference to a numbered rule is to a provision in the Judicial Complaints (Tribunals) Rules 2006.

tribunal or another senior judicial office-holder in the tribunal (hereinafter the “investigating judicial office-holder”). A judicial office-holder who disagrees with a decision of the President to uphold a complaint and record a disciplinary sanction will have a right of appeal to the Lord Chancellor and the relevant Chief Justice. Either the complainant or the judicial office-holder may ask for the case to be referred to the Judicial Appointments and Conduct Ombudsman if they are dissatisfied with the manner in which a complaint was handled.

- 1.2.4 **Accountability.** Those handling a complaint must be accountable for the decisions they make. This means that an investigation into a complaint must at all times be based on evidence. The investigating judicial office-holder will be expected to be able to justify the decision made on a complaint by reference to the evidence presented during the investigation.
- 1.2.5 **Confidentiality.** A guiding principle of the procedures is that information gathered when investigating a complaint is confidential between the parties involved, the Lord Chancellor and the investigating and senior judiciary. Moreover, section 139 of the Constitutional Reform Act 2005 prevents the disclosure of information about disciplinary action that is taken under that Act, save with the agreement of the Lord Chancellor and the relevant Chief Justice.

1.3 THE AIMS AND SCOPE OF THE PROCEDURES

The procedures apply to complaints about those judicial office-holders listed in column 2 of the Schedule to the Rules (see the list at the end of this Guidance). This Guidance is intended to assist those handling complaints but should be made available to all judicial office-holders to whom the procedures apply.

1.3.1 The procedures are not intended to introduce an excessively elaborate or inquisitorial approach to dealing with complaints. They aim to:

- Deal with genuine complaints appropriately whilst ensuring that time is not wasted pursuing enquiries into vexatious or malicious complaints
- Ensure that judicial office-holders within tribunals are seen to be unbiased and to make decisions that are not affected by prejudice
- Maintain the confidence of the public that individual judicial office-holders within tribunals (and the tribunals' judiciary as a body) live up to the very high standards expected of them in discharging their judicial duties.
- Allow individual judicial office-holders within tribunals (and the tribunals' judiciary as a body) to learn from genuine errors in the personal conduct of hearings

1.3.2 The procedures exist to address grievances that arise from the rare instances where judicial office-holders within tribunals exceed the limits of appropriate behaviour or where they fail in their responsibility not to be, or give the appearance of being, biased or prejudiced. They should not discourage them, where appropriate, from asking probing questions during hearings on issues of fact, credibility and so on, even where this has the potential to be uncomfortable and may at times seem intrusive to appellants, legal representatives and other parties.

1.3.3 The procedures respect the constitutional principle of judicial independence. When a complaint is first received, it will always be necessary to conduct an initial diagnosis as to whether the complaint relates wholly or partly to the personal conduct of a judicial office-holder and on the appropriate procedure for handling it. In practice this means that the President will not consider complaints relating solely to decisions made by a judicial office-holder or the steps in the process of reasoning underlying their decision.

1.3.4 The procedures cover complaints:

- relating solely to the personal conduct of the judicial office-holder in and outside the hearing room;
 - relating in part to such personal conduct (in which case the part of the complaint relating to personal conduct will be covered);
 - relating to excessive delay, e.g. in the delivery of a judgement;
 - regarding comments made by a judicial office-holder in the course of proceedings which are not directly integral to the judicial decision or underlying reasoning and which might lower public confidence in the judiciary.
- 1.3.5 *Every* complaint that is received will be considered seriously. That is not to imply that every complaint against a judicial office-holder is justified. Often a complainant might perceive that a judicial office-holder has failed when actually they have discharged their responsibilities appropriately. Investigating judicial office-holders will differentiate between genuine errors and the perception of an error. Equally, the high profile and sensitive nature of the work undertaken by judicial office-holders means that they may receive vexatious, opportunist or even malicious complaints. Whilst recognising the responsibility of the tribunals to provide a means of redress to those with genuine complaints, a thorough complaints procedure must also have the ability to differentiate between justified and unjustified complaints and to respond accordingly to those that may be malicious or unfounded. A complainant will therefore be required not only to meet the requirements of a valid complaint but also to produce evidence in support of their complaint. Where there is a valid complaint regarding personal conduct, a judicial office-holder will be invited to present his or her own evidence and to respond to the evidence presented by the complainant
- 1.3.6 The procedures described in this Guidance do not include arrangements for judicial office-holders wishing to make a complaint about the behaviour or professional conduct of another judicial office-holder within a tribunal. There are separate grievance procedures for the handling of such complaints.

2. THE PROCESS

This section sets out the process for handling complaints against judicial office-holders within tribunals.

2.1 ROLES AND RESPONSIBILITIES IN DEALING WITH COMPLAINTS

2.1.1 **The Lord Chancellor and the relevant Chief Justice** are, under the Constitutional Reform Act 2005, ultimately responsible jointly for the handling of complaints against the judiciary and for judicial discipline. They have agreed that Presidents or other senior judicial office-holders of tribunals should usually be responsible for dealing with complaints in the first instance (see regulation 10 and rule 3). Nonetheless, they wish to be informed, through the Office for Judicial Complaints, of any complaints in the following categories that might have any substance to them (see rule 5(a) to (f)):

- A complaint following a significant number of similar or related complaints
- A complaint of improper discrimination on grounds such as race, gender, sexual orientation, religion or disability
- Any other complaint which is of such significance that either removal of the judicial office-holder by the Lord Chancellor or the imposition by the relevant Chief Justice of a formal penalty under section 108 of the Constitutional Reform Act 2005 might be considered.
- A complaint received from an MP, MEP or member of one of the devolved assemblies
- A complaint about a judicial office-holder who also holds office as a High Court judge or circuit judge (or, in Scotland, a judge of the Court of Session, a sheriff or sheriff principal or, in Northern Ireland, a High Court judge or county court judge).

- A complaint about a judicial office-holder who is no longer a member of the tribunal but holds another judicial office.

They may decide that they wish to deal with such a complaint themselves from the very beginning (see rule 8(3)). Otherwise, they will leave the President or other investigating judicial office-holder to handle the complaint in the usual way. The President will refer to them, through the Office for Judicial Complaints, any such case that, after initial investigation, does not fall to be rejected (see rule 8(1) and (2)).

The Lord Chancellor and the relevant Chief Justice will also deal with any complaint relating to a President. Such a complaint should be made to the Office for Judicial Complaints (see regulation 8).

The Office for Judicial Complaints is established under regulation 3 and provides administrative support for the Lord Chancellor and the relevant Chief Justice but has no decision-making role where the Rules apply.

Under section 108(4) or (7) of the Constitutional Reform Act 2005, the relevant Chief Justice may suspend a judicial office-holder from judicial office while a complaint is being investigated.

- 2.1.2 **The President** is responsible for handling complaints against judicial office-holders within his or her tribunal in conformity with the Regulations and Rules (see rule 3). Where the office of president is vacant or the President is unavailable or incapacitated and no-one is acting as President under any enactment, the relevant Chief Justice may designate another judicial office-holder (from a tribunal but not necessarily the same tribunal) to act as President for the purpose of dealing with a complaint (see rule 11).

The President also has a pastoral role and will counsel, advise and, where necessary, rebuke members of the judiciary against whom a complaint has been upheld in order to maintain the standards of conduct expected of the judicial body as a whole.

- 2.1.3 **The investigating judicial office-holder** may be the President but the President may designate another senior judicial office holder within the tribunal either to consider complaints relating to a category of judicial office-holders generally or to consider a specific complaint (see rule 4(1)). The President may delegate, subject to the terms of the Regulations and Rules, either the whole of the handling of a complaint or part of it (see rule 4(4)). The President must consult the Lord President of the Court of Session or the Lord Chief Justice of Northern Ireland, as appropriate, before designating anyone to deal with a complaint about a judicial office-holder who sits wholly or mainly in Scotland or Northern Ireland (see rule 4(2)).

If, in a small tribunal, there is no-one available within the tribunal who could properly consider a complaint against a judicial office-holder who does not sit wholly or mainly in Scotland or Northern Ireland, the President may designate a judicial office holder from another tribunal who also does not sit wholly or mainly in Scotland or Northern Ireland. If the subject of the complaint sits wholly or mainly in Scotland or Northern Ireland, the President may ask the Lord President of the Court of Session or the Lord Chief Justice of Northern Ireland to designate a judicial office holder from a tribunal or the courts (see rule 4(3)).

Any complaint received by a judicial office-holder in the tribunal or by the Office for Judicial Complaints or the Tribunals Service or by any other person or body must be forwarded to the appropriate investigating judicial office-holder.

- 2.1.4 **The judicial office-holder subject to a complaint** will be expected to co-operate with the complaints handling process and to reply to requests for information regarding a complaint in a timely manner. Rule 6(3) requires that a judicial office-holder who is the subject of a complaint be given at least 20 days in which to respond

to a request for comments or information, but a judicial office-holder will often be able to respond far more quickly.

Judicial office-holders will be aware that given the nature and profile of their work they may be the subject of complaints. In fact the office-holder may be the first person who is aware that a complaint is likely to be lodged. During a hearing it may become apparent, due to comments made or due to the escalation of events, that a complaint is threatened or likely. The office-holder should make a record of events at the earliest opportunity while events are still fresh in the mind. Where a tribunal sits with more than one member, it is good practice for each of the members to make such a record. If the incident or situation appears serious enough, the judicial office-holder may wish to send a written report to the President or another senior judicial office-holder in anticipation of a formal complaint being received.

2.2 REQUIREMENTS FOR A VALID COMPLAINT

2.2.1 A complaint must be made or recorded in writing. If a complaint is made orally, it may be accepted but the complainant will be told that a complaint can only be investigated if it is put in writing (see regulation 11). However this should not preclude complaints from appellants unable to read, write, or speak English. The Tribunals Service (or the supporting government department or agency of tribunals not supported by the Tribunals Service) can arrange for the writing down of a complaint where the complainant is unable to do it themselves and for the translation of complaints received in other languages.

2.2.2 Complainants will be asked to be as specific as possible about the reason for the complaint. The complaint should, wherever possible, be explicit about the individual(s) whose behaviour is the source of the complaint and give detailed reasons and evidence to support the complaint. Generalised complaints cannot be investigated (see rule 7(1)(a)). For example, a complaint that all judicial office-holders are not impartial. This will be explained to the complainant and if need be further details sought (see rule 7(2)). Complaints of this type will be recorded only for general management purposes.

2.2.3 Complainants are not specifically required to give their consent to the complaint being forwarded to the judicial office-holder (and other parties where appropriate). It is assumed that submission of a complaint implies consent to disclose it to the judicial office-holder. If a complainant specifically asks that details of a complaint should be withheld from the judicial office-holder, he or she will be warned that it will not be possible to consider the complaint and, if consent is not forthcoming, the complaint will be treated as withdrawn and will not be investigated (see regulation 12(2)). However, if information received in connection with the complaint suggests that disciplinary action might be justified, that information must be sent to the President so that he or she can refer it to the Office for Judicial Complaints (see rule 8(4)). Complaints that are treated as withdrawn will be recorded only for general management purposes.

2.2.4 Complaints are to be lodged as soon as possible. Whilst not aiming to preclude long standing justified complaints, it clearly becomes more difficult to investigate the veracity of a complaint as time passes. A complaint must usually be made within twelve months of the behaviour complained of but the President or other senior judicial office-holder receiving a complaint may accept a complaint that is late, provided it can be investigated appropriately (see regulations 4 and 5). Regard will be had to the reasons for the delay but also to the existence of tape-recordings, transcripts and other contemporaneous records and the extent to which the judicial office-holder and other potential witnesses can reasonably be expected to recall the circumstances of the case. A complainant refused an extension of time may make representations to the Lord Chancellor and the relevant Chief Justice (see regulation 5(2) to (4)). Such representations must usually be sent to the Office for Judicial Complaints within ten working days.

- 2.2.5 **Complaints must be about judicial conduct.** Some complaints might more properly constitute grounds for an appeal or for the setting aside of a decision. The investigating judicial office-holder will make clear by letter that the complainant should proceed by such means and not via the complaints system (see rule 7(1)(b)). This may apply, for instance, to a complaint that a judicial office-holder was “biased” if, given its context and the way it is expressed, the complaint can be regarded as no more than a way of expressing dissatisfaction with a the judicial office-holder’s decision. In some instances, it may be appropriate to treat a letter of complaint as an application for, say, leave to appeal. Complaints about actions that were not done or caused to be done by a judicial office-holder will be rejected or passed on to the Tribunals Service or other body that might more properly be regarded as the subject of the complaint (see rule 7(1)(c)). Complaints about the private life of a judicial office-holder or about professional conduct in a non-judicial capacity will also not be accepted, unless the conduct could reasonably be considered to affect his or her suitability to hold judicial office (see rule 7(1)(h) and (i)). There may be other complaints that cannot really be said to relate to judicial misconduct and they, too, will be rejected (see rule 7(1)(j)).
- 2.2.6 **Complaints must not be vexatious.** An investigating judicial office-holder may decide that a complaint has already been answered or is malicious and so requires no further action, other than a response to that effect (see rule 7(1)(e) and (f)). However, the receipt of new evidence may justify a new investigation.

2.3 INITIAL INVESTIGATION OF A COMPLAINT

Each stage of the process for handling complaints is set out below:

STEP 1: A complaint is received. The complaint may be received by a judicial office-holder, the Tribunals Service, the Office for Judicial Complaints the Department for Constitutional Affairs or some other person or body. It will be forwarded to the appropriate investigating judicial office-holder or, if there is any doubt as to who that is, the President of the relevant tribunal.

STEP 2: Conflicts? Where a potential conflict of interest may make it inappropriate for the person who would normally be the investigating judicial office-holder to investigate a case, that person must (if he or she is not the President) refer the case to the President and the President must consider designating, or arranging for the designation of, a different person as investigating judicial office-holder (see paragraph 2.1.3 above).

STEP 3: Is the complaint a valid one? The investigating judicial office-holder will consider whether the complaint is invalid for any of the reasons set out in paragraph 2.2 above or whether it is obviously untrue, mistaken, misconceived or otherwise without substance. If it is clear from the face of the complaint that it should be rejected on any of those grounds, the investigating judicial office-holder must write a letter of rejection to the complainant (see rule 7). However, before rejecting a complaint solely on the ground that it does not adequately particularise the matter complained of, the complainant must be given a reasonable opportunity to provide adequate particulars.

A letter of rejection should include a brief explanation (see rule 7(3)(a)). Complaints often fail to be rejected because they do not relate to the personal conduct of the subject of the complaint at all. Given the constitutional importance of judicial independence, the investigating judicial office-holder will not comment on, or attempt to intervene in, complaints relating solely to judicial decision-making. The complainant will receive a letter setting out the constitutional principle of judicial independence and the limits that this places on the investigating judicial office-holder’s ability to comment on the complaint. However, it is important for the investigating judicial office-holder to consider whether there is more than one aspect to a case. Where a complaint regarding judicial decision-making alleges that the decision was based on improper discrimination or other misconduct, that personal impropriety can be investigated if adequate particulars are given.

If the subject of the complaint is aware of the complaint, he or she should be informed that it has been rejected (see rule 7(3)(b)). However, there is no need to mention a complaint to its subject if he or she is unaware of it and it is obvious that it must be rejected.

STEP 4: Should the complaint be referred upwards? When it is not immediately obvious that a complaint should be rejected, an investigating judicial office-holder who is not a President should consider whether the President should be notified, either because the President is likely to be required to inform the Office for Judicial Complaints about the complaint or because the President has asked to be notified of a case of that type or might wish to handle the complaint personally (see rule 4(4) and (5)). The President must inform the Office for Judicial Complaints about any complaint falling within the scope of rule 5(1) (see paragraph 2.1.1 above) and may wish to discuss with the Office for Judicial Complaints what further enquires should be undertaken. If the complaint is about a judicial office-holder who exercises functions wholly or mainly in Northern Ireland and is not a complaint about which the Office for Judicial Complaints need be informed, the investigating judicial office holder must nonetheless notify the Lord Chief Justice of Northern Ireland (through his private office).

STEP 5: Should the complaint be investigated at this time? Where a complaint is not rejected summarily, the investigating judicial office-holder will consider whether it should be investigated immediately. If a complaint relates to personal conduct which has or is likely to be the subject of further legal proceedings, or if proceedings in which the complaint arose are still continuing, it will normally be inappropriate for the investigating judicial office-holder to reply substantively to the complaint until proceedings have been completed. If proceedings before the judicial office-holder who is the subject of the complaint have not been concluded, it will normally be inappropriate to inform him or her of the complaint and it may therefore be necessary to defer the investigation, at least in part. If an appeal is brought against the decision that is the subject of the complaint, the investigating judicial office-holder must decide whether to deal with a complaint immediately or to wait until the appeal has been determined. In some cases, it will be appropriate to investigate the complaint while memories are still fresh but to defer giving any response to the complainant until the appeal has been determined and any relevant findings or comments by the appellate tribunal or court have been taken into account by the investigating judicial office-holder. These judgments can only be made in the light of the particular issues raised by the complaint and the case to which it relates. Whenever an investigation or response is deferred, an explanation should be given to the complainant (see rule 12).

STEP 6: Enquiries. In some cases, it is necessary to make enquiries to determine whether a case should be rejected on the ground that the complaint is invalid for any of the reasons set out in paragraph 2.2 above or is obviously untrue, mistaken, misconceived or otherwise without substance. At the other end of the spectrum, if the case is sufficiently serious that the Lord Chancellor and the relevant Chief Justice might wish to consider whether the subject of the complaint should be removed or formally disciplined, it might be necessary at this stage only to make such enquires as are necessary to enable the President to advise them that a formal judicial investigation under Part 5 of the Regulations should be carried out. Apart from any other enquiries that might be necessary for these purposes, the investigating judicial office-holder will write to seek the written comments of the judicial office-holder who is the subject of the complaint, who will be given at least 20 working days in which to reply (see rule 6).

STEP 7: Is further investigation of the complaint necessary? Where the investigating judicial office-holder believes that further investigation is necessary, consideration will be given to other potential sources of information and evidence. Other people present at the hearing in question (e.g. other members of the tribunal, the clerk, legal or other representatives, an interpreter or an usher) might be asked to provide information and comments on the substance of the complaint. Often it will be appropriate to seek information or comments from some of those people at the same time as taking step 6.

STEP 8: Should the parties to the complaint be consulted in person? In very rare and exceptional circumstances after assessing all the evidence available it is felt that further investigation is still required and the complaint is of a serious nature (but not so serious as to merit referring the case to the Lord Chancellor and the relevant Chief Justice with a view to

there being a formal judicial investigation under Part 5 of the Regulations), consideration may be given to interviewing some or all of the parties concerned in person. Such interviews must always be conducted by at least two people. Any person being interviewed will be entitled to be accompanied by a person of his or her choice.

STEP 9: Examining the evidence and deciding the way forward. Once a submission has been received from the judicial office-holder, the investigating judicial office-holder will examine the complaint, the comments by the judicial office-holder subject to the complaint, and any other evidence available and will decide whether the complaint can be dealt with at this stage.

He or she will consider again whether the complaint should be rejected on the ground that it is invalid or is clearly untrue, mistaken, misconceived or otherwise without substance and, if so, will write to the complainant and to the subject of the complaint if he or she is now aware of the complaint (see rule 7(1) and (3)(a) and (b) and Step 3 above). The investigating judicial office-holder must also inform the Office for Judicial Complaints or the Lord Chief Justice of Northern Ireland if a complaint of which they have been informed is rejected at this stage (see rule 7(3)(c) and (d)).

Where a case is not rejected, an investigating judicial office-holder who is not a President will consider whether the case should be referred to the President because, for instance, the President has asked to have cases of that type referred or the complaint may be well-founded and the conduct might merit guidance, advice or a rebuke by the President or referral to the Lord Chancellor and the relevant Chief Justice through the Office for Judicial Complaints (see rule 4(5)).

2.4 RESOLVING THE COMPLAINT WITHIN THE TRIBUNAL

2.4.1 Response to the complainant. If a complaint that has not been rejected under rule 7 can be determined at this point, a response to the complaint will be produced by the investigating judicial office-holder (see rule 9(2)).

- Where the complaint is dismissed, that will be made clear in the reply to the complainant.
- Where it has not been possible to resolve the complaint (for example where the only evidence is the conflicting views of the complainant and the judicial office-holder subject to the complaint and the complaint is not of sufficient seriousness to justify further investigation), that will be made clear in the reply to the complainant, although the complaint will technically be dismissed.
- Where the complaint is found to have substance, a criticism of a judicial office-holder subject to a complaint has been upheld or there is an issue of importance arising from the complaint, an appropriate response will be given to the complainant, telling him or her of the extent to which the complaint has been upheld. The investigating judicial-office holder must send a copy of the proposed response to the judicial office-holder subject to the complaint for comment before sending it to the complainant (see rule 9(3)). The response will, where necessary, offer a formal apology. It will deal only with the subject matter of the complaint and will not disclose whether any disciplinary action has been taken in the light of complaint. Section 139 of the Constitutional Reform Act 2005 prohibits the disclosure of information about any removal of a judicial office holder or any disciplinary action taken by the relevant Chief Justice under the Act, save with the agreement of both the Lord Chancellor and the relevant Chief Justice.

A copy of the response will be sent to the judicial office-holder subject to the complaint (see rule 9(2)). Where the Office for Judicial Complaints was informed of the complaint but the President is now satisfied that the case can properly be resolved within the tribunal, that Office will also be sent a copy of the response (see rule 9(4)). Similarly, the Lord Chief Justice of Northern Ireland should be sent a copy of a response to any complaint of which he has been informed (see rule 9(5)).

- 2.4.2 **What further action should be taken?** In the case of all complaints which are entirely or partially substantiated and are not referred to the Office for Judicial Complaints, the investigating judicial office-holder or President will decide what action (if any) needs to be taken with the judicial office-holder subject to the complaint, such as issuing guidance, advice or a rebuke. If the Office for Judicial Complaints was informed of the complaint, it should also be informed of that action.
- 2.4.3 **Records.** All paperwork will be kept on file and a record of the status of the complaint created on the complaints database, where there is one. The investigating judicial office-holder is responsible for ensuring that details of complaints and their resolution are forwarded to the President for inclusion in the complaints database or other records. In addition, a rebuke by a President will be recorded on the judicial office holder's personal file. Where a President gives advice to a judicial office holder, he or she will decide whether the advice should be recorded on the judicial office holder's personal file as well as the complaint file.
- 2.4.4 **Appeal by judicial office-holder.** A judicial office-holder may make representations to the Lord Chancellor and the relevant Chief Justice in respect of any rebuke by a President or any decision by a President that advice should be recorded on the judicial office-holder's personal file (see regulation 10(5) and (6)). Such representations should be sent in writing to the Office for Judicial Complaints within ten working days of notice of the President's decision being sent to the judicial office-holder (although time can be extended under regulation 5(4)). The case will then be dealt with under the Judicial Discipline (Prescribed Procedures) Regulations 2006 in the same way as if the President had referred the case upwards rather than making his or her own decision (see regulation 10(7) and (8)).
- 2.4.5 **Further consideration.** Where a potentially serious case has been rejected or dismissed by the investigating judicial office-holder or the President, the Lord Chancellor or the relevant Chief Justice may require the complaint to be given further consideration in accordance with directions (see regulation 10(9) and 10 and rule 10).

2.5 REFERRING THE CASE UPWARDS

- 2.5.1 If the President considers that the complaint should be resolved by the Lord Chancellor and the relevant Chief Justice, he or she will send to the Office for Judicial Complaints details of the investigation within the tribunal and (except in the case of a judicial office-holder who is no longer a member of the tribunal) advice on whether a full judicial investigation is required or on how to resolve the complaint (including if appropriate a draft response letter) (see rule 8(1) and (2)). Cases of the type listed in paragraph 2.1.1 above *must* be referred to the Office for Judicial Complaints. If the President is in any doubt as to whether a case should be referred upwards, he or she may seek advice from the Office for Judicial Complaints.
- 2.5.2 All paperwork will be kept on file and a record of the status of the complaint created on the complaints database where there is one.

2.6 COMPLAINTS AGAINST FORMER MEMBERS OF THE TRIBUNAL

- 2.6.1 A complaint against a person who no longer holds judicial office of any sort does not fall within the scope of the Rules. Technically, therefore, the complaint must be rejected (see rule 7(1)(g)). However, where such a complaint is received, consideration should still be given to investigating it informally and the former judicial office-holder may be asked to comment upon it even though he or she cannot be compelled to do so. Such a person cannot be the subject of disciplinary proceedings, so there can be no question of the case being referred to the Office for Judicial

Complaints. That may limit the extent to which it is possible or appropriate to investigate a complaint.

- 2.6.2 Where a person no longer holds judicial office in the tribunal in relation to which the complaint arose but holds another judicial office, the President retains no disciplinary authority over him or her but the Lord Chancellor and the relevant Chief Justice do. The President must therefore notify the Office of Judicial Complaints of any complaint that is not summarily rejected (see rule 5(f)). If the subject of the complaint now holds a judicial office equivalent to, or senior to, that of the President, it is likely that the Lord Chancellor and the relevant Chief Justice will take over any investigation (see rule 8(3)). In any other case, the President or an investigating judicial office-holder will investigate the complaint in the usual way but, if not minded to reject the complaint under rule 7, must refer the complaint to the Office for Judicial Complaints with the information gathered in the investigation (see rule 8(2)).

2.7 COMPLAINT TO THE OMBUDSMAN

Under section 110 of the Constitutional Reform Act 2005, a complainant or a judicial office-holder may apply to the Judicial Appointments and Conduct Ombudsman for a review of the investigation of a complaint on the ground that there has been maladministration, provided the application is made within 28 days of the maladministration or the conclusion of the investigation. If satisfied that there has been maladministration, the Ombudsman may make recommendations (including for the payment of compensation) and, if satisfied that a determination is unreliable due to maladministration, the Ombudsman may set aside the determination so that a fresh determination must be made.

2.8 WHERE THE CASE IS REFERRED TO THE LORD CHANCELLOR AND THE RELEVANT CHIEF JUSTICE

Under the Judicial Discipline (Prescribed Procedures) Regulations 2006, the Lord Chancellor and the relevant Chief Justice may decide that a case is so serious and complex that an investigating judge should be appointed (see regulation 19). The President or another senior judicial-office holder within the tribunal may be appointed as the Investigating Judge, although that will not necessarily be so. In such a case, the investigation will be conducted in accordance with Part 5 of the Regulations and the Investigating Judge's terms of reference, rather than in accordance with the Rules. The Investigating Judge will be required to report his or her findings to the Lord Chancellor and the relevant Chief Justice and they will decide what action to take (see Part 6 of the Regulations). There is provision for the findings of an Investigating Judge or a proposed decision of the Lord Chancellor and the relevant Chief Justice to be challenged before a Review Board consisting of a judicial office-holder senior to the subject of the complaint, another judicial office-holder of the same standing and two people who are neither judicial office-holders nor lawyers (see Part 7 of the Regulations).

3. ADMINISTRATIVE SUPPORT FOR THE COMPLAINTS PROCESS

This section sets out the administrative arrangements in place to support these elements of the complaints handling process.

3.1 MANAGING THE PROCESS

The President of a tribunal retains overall responsibility for the management of the complaints process. However, the President cannot be expected to pursue each complaint personally and many are delegated to other senior judicial office-holders within the tribunal to investigate.

Tribunal staff support the President. They do not make decisions on the substance of complaints against judicial office-holders. This role is retained by the nominated investigating judicial office-holders and the President. However, they assist by, for example:

- Checking basic factual information relating to a complaint, e.g. is the judicial office-holder named in the complaint actually the person who heard the complainant's case?
- Identifying other potential witnesses to the incident giving rise to the complaint, e.g. interpreters, legal representatives and so on.
- Assembling materials from the investigation for consideration by the investigating judicial office-holder and, where necessary, progress chasing where targets for complaints handling are not being met.
- Updating and maintaining the complaints database and providing the investigating office-holder with relevant management information.

Staff work under the close direction of the investigating judicial office-holder. The job descriptions for members of staff stress the need for strict confidentiality in dealing with complaints against judicial office-holders.

3.2 TIME TARGETS FOR HANDLING COMPLAINTS

The following targets are set for the handling of complaints that are not referred to the Office for Judicial Complaints:

- An initial assessment will be completed and the appropriate letter(s) will be sent within 5 working days of receipt by the investigating judicial office-holder of a complaint. The appropriate letter(s) might, for instance, be a letter of rejection to the complainant or both a letter of acknowledgement to the complainant and a letter to the judicial office-holder subject of the complaint, seeking his or her views.
- The judicial office-holder subject to the complaint (and any other persons from whom comments are sought) will provide comments within 20 working days of receipt of a letter from the investigating judicial office-holder.
- Where no further information is required or available, the investigating judicial office-holder will consider the evidence and produce a response, or draft response, to the complainant within 10 working days of receipt of the letter(s) from the judicial office-holder subject to the complaint (and any other persons from whom comments were sought).
- Where further information is required, the investigating judicial office-holder will seek this information within a further 10 working days. Once this information is supplied, the investigating judicial office-holder will consider the evidence and produce a response, or draft response, to the complainant within 5 working days.
- In the most exceptional circumstances, where interviews are considered appropriate, they will be arranged within 10 working days from the receipt of other response letters. Once the interviews have been completed, the investigating judicial office-holder will consider the evidence and produce a response, or draft response, to the complainant within 5 working days.
- Where a draft response is produced, it will be sent to the judicial office-holder subject to the complaint for comments and he or she will provide comments within 5 working days of receipt.
- The investigating judicial office-holder will send out a letter to the complainant within 10 working days of receipt of the comments of the judicial office-holder subject to the complaint.
- If consideration of a case must be deferred in the light of on-going proceedings, the complainant will be told within 5 days and consideration of the complaint will be resumed within 5 days of the investigating judicial office-holder being informed that the proceedings have come to a conclusion.

Where a case is to be referred to the Office for Judicial Complaints, those targets apply save that a report for the Lord Chancellor and the relevant Chief Justice will be produced instead of a response to the complainant.

It is recognised that different time targets may be required for some smaller tribunals where few if any judicial office holders hold salaried appointments and where administrative resources may be limited. If the above targets are impractical, the President should set alternative targets. Also, where new information from other sources is obtained after the subject of the complaint has been asked for his or her initial comments on a complaint, fairness may require that he or she be given an opportunity to comment on that new information, in which case it may become impossible to meet the relevant target.

3.3 A COMPLAINTS DATABASE OR OTHER RECORDS

The Lord Chancellor and the relevant Chief Justices will wish to monitor complaints made against judicial office-holders in tribunals and the efficiency of the processes for dealing with such complaints.

It is also important for a President to monitor complaints in order to consider whether the process for dealing with them can be improved and also identify whether there are particular issues that arise for the judicial body as a whole or for individual judicial office-holders. These issues, once identified, can be addressed through training and/or development, e.g. training to increase awareness of the issues surrounding the handling of a particular minority group. To achieve this, the President should maintain information relating to complaints received and will use that information to identify trends in complaints and take action to improve standards of performance.

Each tribunal should therefore collate details of complaints made against individual judicial office-holders in that tribunal. Regular reports will be sent to the Office for Judicial Complaints.

In large tribunals, an electronic database should be set up. A member of staff under the President's direction will maintain the database. The database will hold information and produce management reports. In particular, it should be possible to produce a report showing:

- the total number of complaints rejected under rule 7, broken down by the reasons for rejection;
- the total number of complaints referred to the Lord Chancellor and the relevant Chief Justice, broken down by the reason for the referral;
- the total number of complaints dismissed, broken down by the reason for dismissal (including those dismissed because they could not be resolved);
- the total number of complaints upheld, broken down by the action taken (if any).

In smaller tribunals, such information should be collated manually.

This information will be confidential and held on a terminal or in a file which will only be accessible to the President and those members of staff who require access to discharge their management functions. Individual judicial office-holders will have access to their personal records only.

LIST OF TRIBUNALS TO WHICH THIS GUIDANCE APPLIES

This guidance applies to complaints against those members of the following tribunals who are appointed by Her Majesty or the Lord Chancellor.

Adjudication Panel for England
Agricultural Land Tribunal
Asylum and Immigration Tribunal
Care Standards Tribunal
Child Support Commissioners
Commons Commissioners
Competition Appeal Tribunal
Copyright Tribunal
Criminal Injuries Compensation Appeals Panel
Employment Appeal Tribunal
Employment Tribunals (England and Wales)
Family Health Services Appeal Authority
Financial Services and Markets Tribunal
Immigration Services Tribunal
Information Tribunal
Lands Tribunal
Mental Health Review Tribunals
Pensions Appeal Tribunal (England and Wales)
Residential Property Tribunals
Special Commissioners
Special Educational Needs and Disability Tribunal
Special Educational Needs Tribunal for Wales
Social Security and Child Support Appeal Tribunals
Social Security Commissioners
Transport Tribunal
VAT Tribunal (England and Wales)