

THE JUDICIAL COMPLAINTS (TRIBUNALS) RULES 2008

ROLES AND RESPONSIBILITIES

In order to ensure the effective operation of the 2008 Rules it is important that complainants, the subjects of complaints, and those tasked with the handling of complaints have a clear understanding of their respective roles and responsibilities. Much of the detail relating to their functions is set out in the 2008 Rules but this document provides an overview of the main roles and responsibilities of those involved in the complaints process.

1. THE LORD CHANCELLOR AND THE RELEVANT CHIEF JUSTICE

- The Lord Chancellor and the relevant Chief Justices are together responsible for providing a system for considering and determining complaints of misconduct against tribunal judicial office holders. They have agreed, and the 2008 Rules provide, that the relevant President or other senior tribunal judicial office-holder should usually be responsible for dealing with complaints in the first instance.
- Although each has some distinctive functions in relation to particular aspects of the system, overall responsibility for ensuring that complaints are properly investigated, and for deciding on any action which may be necessary, is a joint one involving both the executive and the judiciary working together.
- The Lord Chancellor and the relevant Chief Justice (or their delegates) are responsible for the final decision in relation to complaints not resolved by a President. Under the Judicial Discipline (Prescribed Procedures) Regulations 2006, the Lord Chancellor and the relevant Chief Justice decide whether to uphold complaints that have not been rejected and what, if any, disciplinary action to take where complaints are referred to them.

2. THE COMPLAINANT

- The complainant is responsible for:
 - Making a complaint in writing and being as specific as possible about the reason for the complaint.
 - Making a complaint within twelve months of the event or matter complained of, or within twelve months from the end of a continuing state of affairs (the time limit may be extended where there is a good reason to do so).
 - Complying with timescales or requests for information made by the relevant President.

3. THE RELEVANT PRESIDENT

The relevant President is responsible for:

- Handling complaints against tribunal judicial office holders within his or her tribunal in conformity with the 2008 Rules. The President retains overall responsibility for the management of the complaints process but may designate a suitable tribunal judicial office holder to deal with any complaint.
- If the President deals with the complaint he or she is responsible for:
 - Setting timescales for the resolution of the complaint.

- Maintaining appropriate records of the steps taken in handling the complaint.
 - Keeping the complainant and the subject of the complaint informed of progress.
 - Determining the complaint in accordance with the 2008 Rules.
 - Referring complaints to the OJC where the President considers, or the 2008 Rules require, that the complaint should be resolved by the Lord Chancellor and the relevant Chief Justice.
- Presidents should ensure that copies of the 2008 Rules are made available to tribunal judicial office holders who are subject to a complaint; and to members of the public who wish to make a complaint.
 - The President has a pastoral role and will counsel, advise and, where necessary, rebuke tribunal judicial office holders against whom a complaint has been upheld in order to maintain the standards of conduct expected of the judiciary.

4. THE INVESTIGATING JUDICIAL OFFICE HOLDER

- The investigating judicial office holder may be the President but to the extent another senior tribunal judicial office holder is designated to deal with a complaint he or she is responsible for:
 - Setting timescales for the resolution of the complaint.
 - Maintaining appropriate records of the steps taken in handling the complaint.
 - Keeping the complainant and the subject of the complaint informed of progress.
 - Determining the complaint in accordance with the 2008 Rules (unless the President has reserved the determination to him or herself).
 - Informing the President of complaints he or she does not reject and that the President must inform the Lord Chancellor and relevant Chief Justice of, and those where the President may want to take disciplinary action themselves.

5. THE SUBJECT OF THE COMPLAINT

- The tribunal judicial office holder subject of the complaint is responsible for:
 - Co-operating with the complaints handling process.
 - Responding to requests for comments or information in a timely manner and in accordance with the 2008 Rules.

6. THE INVESTIGATING JUDGE

- The Lord Chancellor and relevant Chief Justice may decide that a case is so serious and complex that an investigating judge should be appointed and the matter dealt with under the 2006 Regulations.

7. THE OFFICE FOR JUDICIAL COMPLAINTS (OJC)

- The OJC was launched in April 2006 to support the Lord Chancellor and the relevant Chief Justices in their joint responsibility for judicial conduct and discipline.

- The OJC is responsible for the maintenance and provision of the 2008 Rules. The office advises the Lord Chancellor and the relevant Chief Justices (or their delegates) on their content.
- The OJC has a general advisory role and it can be contacted for advice on any issue relating to the operation or interpretation of these rules. It will not always be possible to provide an immediate response to a request for advice; however, in such situations the OJC will provide regular updates (the relevant President retains responsibility for updating the parties to any particular complaint).

8. THE JUDICIAL APPOINTMENT AND CONDUCT OMBUDSMAN (JACO)

- Section 110 of the 2005 Act provides for the subject of the complaint or the complainant to apply to the JACO for a review 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 may only review a case if:
 - he or she considers that the review is necessary (so that trivial or vexatious applications, or ones which raise no issue the JACO can consider will not proceed);
 - the application is made within 28 days (or exceptional circumstances justify a longer period); and
 - the application is in the form approved by the Ombudsman.
- The Ombudsman cannot substitute his or her own decision on the merits of a complaint of judicial misconduct, rebuke or reprimand a tribunal judicial office holder, or decide to trigger procedures for removing them from office.
- The JACO can, however, if satisfied that the grounds of the complaint are justified to any extent:
 - Make recommendations to the Lord Chancellor and the relevant Chief Justice including the payment of compensation in respect of any loss which the applicant has suffered as the result of any failure or maladministration to which the application relates or;
 - If the JACO decides that any determination is unreliable because of any such failure or maladministration, he can set the determination aside (in which case any investigation or review leading to it is to be disregarded and must start afresh).
- When the JACO receives an application the relevant President will normally be contacted by the JACO to provide all the relevant information. It is therefore important that Presidents keep records when dealing with a complaint.
- The JACO will then review the case and prepare a report containing findings. The relevant President will be given an opportunity to comment on the draft report. Further information about the role of the JACO can be obtained from (www.judicialombudsman.gov.uk)