

**Memorandum of Understanding between
the Office for Judicial Complaints, the
Ministry of Justice and the
Directorate of Judicial Offices for England and Wales**

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1. Purpose of this Memorandum

- 1.1 Under the Constitutional Reform Act 2005 ('the Act') and the Judicial Discipline (Prescribed Procedures) Regulations 2006 ('the Regulations') made under sections 115, 120 and 121 of the Act, the Lord Chancellor and the Lord Chief Justice are jointly responsible for the system of considering and determining complaints about the conduct of the judiciary in England and Wales,¹ and other cases in which disciplinary action is taken or contemplated.
- 1.2 In accordance with the 'Concordat'² of January 2004 between the Lord Chancellor and the Lord Chief Justice, the Office for Judicial Complaints (OJC) has been set up to advise and support them in their responsibilities for the complaints and discipline system.
- 1.3 This Memorandum sets out the nature of the links between the OJC, the Ministry of Justice (MoJ) and the Directorate of the Judicial Offices for England and Wales (DJO), which is the office which supports the Lord Chief Justice and the senior judiciary across the range of their responsibilities under the Act.
- 1.4 Any question regarding the interpretation of this document will be resolved by the MoJ and the DJO in consultation with the OJC.

2. Effective date and arrangements for review

- 2.1 This Memorandum took effect on 3 April 2006 and was reviewed by the Head of the OJC, the Director General, Legal and Judicial Services MoJ, and the Director of the DJO after it had been in force for one year, and will be reviewed every three years thereafter. Amendments may be made at any time by mutual agreement between the OJC, the MoJ and the DJO.

3. The status and the role of the OJC

- 3.1 The OJC is an Associated Office of the MoJ. Civil Servants in the OJC work jointly and equally to the Lord Chancellor and the Lord Chief Justice in respect of their responsibilities under the Act and the Regulations. Therefore
 - a. its operational policies and practices are determined by the Lord Chancellor and the Lord Chief Justice jointly, and
 - b. it is operationally independent of the MoJ and the DJO, save for the provisions at paragraphs 5.1-5.7.
- 3.2 The operational objectives of the OJC (set out at *Annex A*) are subject to the annual review and agreement by the Lord Chancellor and the Lord Chief Justice in consultation with the OJC.

¹ The OJC also supports the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland in their joint responsibilities with the Lord Chancellor for disciplinary matters concerning judicial office holders sitting in UK-wide tribunals.

² The Lord Chancellor's judiciary-related functions: Proposals', commonly referred to as 'the Concordat'.

4. The OJC's joint accountability to the Lord Chancellor and the Lord Chief Justice

- 4.1 The OJC is accountable to the Lord Chancellor and the Lord Chief Justice for the effective and efficient operation of the system of complaints and discipline. The OJC provides the advice and support, set out in the operational objectives, which the Lord Chancellor and the Lord Chief Justice need to carry out their responsibilities for judicial discipline.
- 4.2 In January each year, the Sponsorship Team and the Director of the DJO will advise the OJC of any issues and key priorities that they would wish the OJC to consider when business planning for the forthcoming financial year. Around the end of each financial year, the OJC will produce a combined annual Corporate and Business Plan covering its activity over the forthcoming year in detail and reflecting planned future developments for the next two years, which is to be agreed between the Lord Chancellor and the Lord Chief Justice and which
 - a. takes account of the estimated number of incoming cases and the predicted activity and life of current cases not yet completed,
 - b. sets out their operational objectives,
 - c. identifies the specific key targets for the coming year to serve as the benchmarks against which the OJC's performance and value for money will be measured,
 - d. sets out spending plans and efficiencies supported by budgeting information, so that resources allocated to achieve specific objectives can be readily identified by the MoJ, and
 - e. is published on the OJC website.
- 4.3 Before putting the Corporate and Business Plan to the Lord Chancellor and the Lord Chief Justice, the Head of the OJC will send it in draft to the Sponsorship Team and to the Director of the DJO by 1 February each year. This will enable the Sponsorship Team and the Director to discuss the draft with the OJC officials before the plan is agreed by the Lord Chancellor and Lord Chief Justice for the new financial year. The OJC will submit sufficient financial information about their plans for the coming financial year by such date as is required to meet the central financial planning timetable. This is in order for the Director General of Legal and Judicial Services to allocate resources in light of the plans and the overall resources available. The corporate plan, business plan and spending plans may need to be amended in the light of allocations made to the OJC.
- 4.4 The OJC will provide the Lord Chancellor and the Lord Chief Justice with a monthly statistical report in an agreed format on the number and type of complaints they have dealt with.
- 4.5 The OJC will provide the MoJ and the DJO with quarterly reports one month after the end of each quarter against key performance targets derived from the Corporate and Business Plan and any other performance information requested by the MoJ or the DJO.
- 4.6 Each year from 2007, an Annual Report will be published by 30 June by the Lord Chancellor and the Lord Chief Justice which will:

- a. report generally on complaints and discipline activity over the year;
 - b. evaluate the OJC's performance against the performance targets set out in the corporate and business plan;
 - c. include a summary statement of the income and expenditure of the OJC for the financial year concerned; and
 - d. be placed in the libraries of both Houses of Parliament.
- 4.7 Before putting the Annual Report to the Lord Chancellor and the Lord Chief Justice, the Head of the OJC will send it in draft to the Sponsorship Team and to the Director of the DJO by the end of the first full week in June. This will enable the Sponsorship Team and the Director to comment on factual accuracy, and discuss, if necessary, the draft with the OJC officials before the report is published by the Lord Chancellor and Lord Chief Justice.
- 4.8 The Sponsorship Team and the Director of the DJO will provide comments (copied to each other) to the OJC on all draft plans and reports within ten working days.
- 4.9 The Head of the OJC is a Senior Civil Servant appointed using open competition and a selection panel chaired by a Civil Service Commissioner. The current Head was appointed for a renewable term of 3 years beginning on 3 April 2006. The Lord Chief Justice will have to approve renewal of the contract or a decision, for whatever reason, to terminate the contract early. The personal objectives and the annual appraisal report of the Head must be agreed by the MoJ Director of Judicial Services and Corporate Diversity and the Director of the DJO.
- 4.10 For the purposes of the Data Protection Act 1998, the MoJ and the DJO are jointly data controllers of personal data processed by the OJC. Current and non-current records (which include those records of complaints and discipline cases handled by the DCA prior to the launch of the OJC) are transferred to the OJC in accordance with the National Archive's Records Management Standard RM 4.1 (2001).
- 4.11 The services provided by the MoJ Communications Directorate and the Judicial Communications Office are listed in *Annex C*. The Chief Public Information Officer at the Judicial Communications Office and the Chief Press Officer at the MoJ Press Office will each ensure that the other is fully informed of any activities they perform for or on behalf of the OJC.

5. The relationship between the OJC, the MoJ and the DJO

- 5.1 The Permanent Secretary is the Lord Chancellor's principal adviser on matters affecting the MoJ as a whole, including resource allocation and expenditure. He is also the Principal Accounting Officer for the MoJ and is responsible to Parliament for the money spent by the Ministry and for signing the annual accounts. He provides the staff and resources, including financial resources, necessary for the OJC to carry out its functions effectively.
- 5.2 The MoJ is responsible for ensuring propriety in the use of all public monies allocated to it and its Associated Offices, which includes the OJC. Therefore, the MoJ will:

- a. following each spending review or business planning round, determine, in the light of its overall expenditure priorities and in consultation with the DJO, the support services required and a clear budgetary delegation of the resources to enable the achievement of objectives and targets jointly agreed by the Lord Chancellor and the Lord Chief Justice;
 - b. ensure that the OJC operates within the usual government accounting rules on financial accountability through adequate financial systems and procedures; and
 - c. set the financial framework for the OJC which is described in *Annex D*.
- 5.3 As part of the MoJ's overall sponsorship role, the Director General, Legal and Judicial Services, who is accountable to the Permanent Secretary, formally delegates as senior budget holder the annual budget for the OJC to the Head of the OJC. In turn, the Head of the OJC is responsible for maintaining internal controls – including financial control – in line with the best practice guidance issues from time to time by the MoJ. The Head of the OJC will therefore:
- a. provide the Director General with quarterly statements of assurance on the effectiveness of the OJC's internal control systems and complete a Statement of Internal control twice a year;
 - b. develop and maintain an adequate risk management strategy to assess the value of and threat to key assets and objectives and how any risks might be minimised. The risk log will be reviewed and reported on in line with the procedures and frequency set out in the MoJ's Risk Policy and Strategy; and
 - c. follow the financial framework set out in *Annex C* and inform the MoJ of its expenditure through the Ministry's Accounting System. It will also have three budget reviews with the MoJ during the course of each financial year.
- 5.4 The OJC is a small office, and it is neither practical nor cost effective for it to employ staff or use contractors to undertake the range of support services it needs. The MOJ therefore provides a range of support services, including legal advice services and corporate services, either director or via external contractors. A list of services provided is at *Annex B*.
- 5.5 The OJC must adhere to the MoJ's security, business continuity, IT security and Health and Safety policies.
- 5.6 The DJO supports the Lord Chief Justice in his responsibility for the deployment of judicial office holders. Therefore, and to timescales agreed between the DJO and the OJC, if the OJC informs the DJO that,
- a. the Lord Chancellor and the Lord Chief Justice have decided that a discipline case requires a judicial investigation, the DJO will ask the Lord Chief Justice to identify a suitable Judge who is available to carry out the investigation;
 - b. a review body is required, the DJO will ask the Lord Chief Justice to identify 2 suitable judicial office holders to serve on the review body; and

- c. the Lord Chief Justice decides, with the agreement of the Lord Chancellor to appoint a Nominated Judge or Judges under regulation 19 of the Regulations, the DJO will ask the Lord Chief Justice to identify a suitable Judge or Judges.

5.7 Exceptionally, the MoJ and the DJO (rather than the OJC) may advise the Lord Chancellor or the Lord Chief Justice respectively on any matters relating to the discharge of the OJC's functions that they may require. These may include any proposed amendments to its procedural framework, the Regulations and Rules, or draft reports from the Judicial Appointments and Conduct Ombudsman.

6. Unsubstantiated complaints and pastoral matters

6.1 The OJC supports the Lord Chancellor and the Lord Chief Justice solely in their responsibilities for judicial discipline. There are cases which do not raise issues of judicial discipline and which the OJC therefore dismisses in accordance with regulation 14 of the Regulations. All cases once dismissed are then closed.

6.2 Where an unsubstantiated and dismissed complaint contains matters that are of concern or relevance to the MoJ, the Head of the OJC or the named Deputy Head may, with the agreement of the MoJ and the DJO, forward the relevant parts of the complaint which they have dismissed for the attention of the relevant part of the MoJ. Care must be taken to ensure that such extracts are redacted so that identities of judges complained against are not unnecessarily and inappropriately promulgated.

6.3 Where a number of complaints have been received about an individual judicial office holder each of which individually has been dismissed under the Regulations, or where in exceptional circumstances a single unsubstantiated and dismissed complaint, appear to the Head of the OJC or to the named Deputy Head to raise training or pastoral issues then she/he may authorise that the matter/matters be passed to the DJO. The DJO may consider it necessary to refer them to an appropriate senior judicial office holder to determine whether the issues involved raise pastoral or training issues. Where asked, the OJC will supply additional information about such cases to the DJO to enable the appropriate course of action to be determined.

7. MoJ Legal Directorate and legal advice to the OJC

7.1 The OJC in the course of its business requires two main streams of legal input: legal advice and litigation support. MoJ Legal Directorate will normally provide this input for the Lord Chancellor and the Lord Chief Justice jointly, but will also have arrangements for advising either separately, or for obtaining advice from the Treasury Solicitor's Department or from Treasury Counsel as required.

7.2 Investigating Judges and review bodies may also request legal advice, which can be provided through the same mechanism. Although this legal advice will be privileged, an Investigating Judge or review body will be expected to refer to the substance of that advice when in his report to the Lord Chancellor and the Lord Chief Justice he explains the reasoning behind his findings and recommendation. Furthermore, when a case is referred to a review body or the Judicial Appointments and Conduct Ombudsman for review, all relevant material including privileged legal advice will be forwarded.

7.3 As required, Legal Directorate will set out line management arrangements for the members of Legal Directorate providing the advice.

8. OJC Staff

8.1 Members of the OJC staff are civil servants employed by the MoJ or on secondment from other Government departments. All staff, including those on secondment, will be employed on the terms and conditions of service set out in the MoJ Employee Manual and will be employed under MoJ HR procedures. It is usually considered good practice for staff to experience a variety of postings in the course of their career.

9. Complaints about the OJC

9.1 If complaints are made directly to the MoJ or the DJO about the quality of service provided by the OJC, they will be referred to the OJC to be dealt with in accordance with the OJC's internal complaints handling procedures. The Judicial Appointments and Conduct Ombudsman has powers, under sections 110 – 114 of the Act, to review, and make recommendations concerning, the OJC's handling of complaints where there has been an alleged failure to comply with prescribed procedures or some other alleged maladministration.

Signed:

Director General, Legal and Judicial Services, Ministry of Justice

Director of the Judicial Office for England and Wales

Head of the Office for Judicial Complaints

Annex A: Operational objectives of the OJC

The Operational Objectives of the OJC are set out below.

1. To handle complaints about the conduct of judicial office holders and other discipline issues,
 - a. in accordance with the procedures prescribed under Regulations,
 - b. with recognition and respect for the principles of judicial independence,
 - c. to the satisfaction of the Lord Chancellor and the Lord Chief Justice, and
 - d. in such a way as addresses the diverse needs of all its customers.
2. To provide an open, transparent and accessible service to those who wish to make a complaint about the personal conduct of judicial office holders. Where the OJC itself is unable, under the Regulations, to deal with a complaint, it will seek to direct the complainant to an organisation which can help them.
3. To provide an expeditious service to judicial office holders who are the subject of a complaint or disciplinary procedures.
4. To provide professional support to Nominated Judges, Investigating Judges and review bodies and advice and support to Tribunal Presidents and Advisory Committees, and to co-operate constructively with the Judicial Appointments and Conduct Ombudsman.
5. To maintain effective business relationships with other stakeholders including the wider judiciary, professional legal bodies, and the general public.
6. To seek continually to improve the efficiency of processes for dealing with complaints, and to advise the Lord Chancellor and the Lord Chief Justice on responses to reports from the Judicial Appointments and Conduct Ombudsman or where a revision of the Regulations or Rules is proposed.
7. To enhance consistency in handling, nationally and locally, of complaints and conduct and disciplinary matters.
8. To work with other offices which handle complaints about aspects of the justice system to streamline its service to the customer.
9. To promote better understanding of the remit of the OJC among court and tribunal users and the wider public.
10. To attain recognition from consumer representative bodies of the standard of service it provides to the customer, and to achieve Charter Mark status.

Annex B: Services provided by the MoJ to the OJC

There are a number of corporate services which are shared by many business areas in the MoJ family. MoJ provides a range of support services to the OJC, either directly or via its own external contractors, in the same way as it does to other Divisions within the MoJ. These shared services are listed below.

1. Human Resources Directorate

- a. HR policy and practice guidance
- b. pay policy and performance management systems
- c. HR administration, including recruitment, selection and job evaluation, issuing employment contracts and advice on grievance, disciplinary procedures, etc
- d. superannuation
- e. training
- f. staff welfare services.

2. Finance Directorate

- a. financial policy and practice guidance
- b. assistance with accounts production
- c. arrangements for auditing of accounts
- d. management accounting guidance
- e. corporate governance
- f. monitoring service delivery under ARAMIS (Liberata) contract (excluding payroll and IT)
- g. through ARAMIS/Liberata, payment of salaries and invoices for goods and services, maintenance of record of expenditure and income, production of monthly statements.

3. Commercial Group

- a. accommodation and support services
- b. security
- c. health and safety
- d. business continuity planning.

4. Internal Assurance Division

- a. internal auditing services.

5. Procurement Division

- a. specialist commercial advice and guidance
- b. provision of contracts for goods and services, including consultancy
- c. provision of contract management
- d. Government Procurement Card.

6. Legal Directorate: LI Division (Courts and Judiciary)

- a. legal advice (where appropriate, but not exclusively)
- b. litigation (where appropriate, but not exclusively).

7. Legal and Judicial Services Group Secretariat

- a. invoice processing and budget monitoring
- b. co-ordination of business continuity planning on behalf of the Director-General, Legal and Judicial Services Group
- c. co-ordination of risk management and corporate governance activity on behalf of the Director-General, Legal and Judicial Services Group
- d. resource monitoring, including headcount
- e. finance training (on procedures adopted within Legal and Judicial Services Group).

8. HMCS Communications

- a. internal communications media (*In Court*).

9. e-Delivery Group

- a. IT hardware and software support
- b. provision of hardware and software via ARAMIS catalogue
- c. Infonet access
- d. Internet (email and web-browsing) access
- e. Registry and record management services
- f. Print Room and MFD services.

10. The Lord Chancellor's Office: Parliamentary Branch

- a. liaison with the Stationery Office
- b. laying of the Annual Report before Parliament.

Annex C: Services provided to the OJC by the MoJ Communications Directorate and the Judicial Communications Office

1. Services provided jointly

- a. Advising on general media issues.
- b. Assistance with drafting and distribution of press notices.

The Judicial Communications Office and the MoJ Communications Directorate will keep each other informed of OJC communications issues by means of information-sharing arrangements agreed by the Head of the Judicial Communications Office and the MoJ Director of Communications. All sensitive communications issues, in particular those relating to the disciplinary sanctions, will be dealt with by the Chief Public Information Officer at the Judicial Communications Office and the MoJ Chief Press Officer; in the event of either of them being absent, the issue will be referred to a more senior official.

2. Services provided by the Judicial Communications Office

- a. The Chief Public Information Officer at the Judicial Communications Office will manage all media calls on OJC business, including interview requests; and advise judicial office holders on media matters relating to complaints or discipline.
- b. The Chief Public Information Officer at the Judicial Communications Office will advise the OJC and liaise with the media in relation to complaints against judicial office holders and sanctions or proposed sanctions short of removal which are administered by the Lord Chief Justice.
- c. The Head of Corporate Communications at the Judicial Communications Office will advise judicial office holders on internal communications relating to complaints or discipline.

3. Services provided by the MoJ Communications Directorate

- a. The Chief Press Officer will advise the OJC and liaise with the media in relation to the removal or proposed removal from office of a judicial office holder.
- b. Communications Directorate will advise on publicity, events and web and print publications.

Annex D: Financial framework

Amendment and Review

1. This framework may be changed in accordance with Government Accounting and Treasury requirements, to take account of new developments or by agreement. If the MoJ, the Lord Chief Justice or the Head of the OJC requires changes to be made they shall notify the other parties in writing. Any changes will need to be agreed by the MoJ, the Lord Chief Justice and the Head of the OJC. This Memorandum of Understanding shall be amended as appropriate to reflect any agreed changes/

MoJ Responsibilities

2. MoJ is responsible for providing:
 - a. the OJC with an indication of the level of funds that will be available in any financial year by the earliest practicable date;
 - b. the OJC with details of funds allocated to it by the earliest practicable date, and if at all possible by the start of the financial year in question;
 - c. monthly extracts from the Ministry's accounting system relating to the OJC;
 - d. guidance, assistance and training of the OJC as required to enable the OJC to meet its responsibilities.

OJC responsibilities

3. The Head of the OJC is responsible for ensuring that the OJC follows the procedures set out below and shall:

Budget

- a. use Liberata Newport for processing payments from and, should it become appropriate, receipts to the budget allocated to the OJC to check these transactions for accuracy, and monitor their inclusion on the Ministry's accounting system;
- b. not open a bank account nor retain cash beyond a working imprest agreed with the MoJ Finance Division;
- c. monitor the level of expenditure incurred against allocations, alerting the MoJ if it appears that expenditure will exceed the amount allocated. To achieve this the Group Secretariat will ask the OJC to:
 - provide a monthly budget forecast for the financial year;
 - update the forecast monthly with accompanying explanation as to the vacancies;
 - meet at least 3 times a year to discuss budget issues.

Purchases and disposals

- d. not rent, lease or purchase any assets with a capital value of more than £20,000 without the prior approval in writing of the MoJ and, in respect of the rent, lease or purchase of IT equipment or accommodation, without the advice of the MoJ being sought before entering into any commitments;
- e. not separately acquire or dispose of leasehold or freehold interests in property or enter into commitments except with the prior approval (regardless of value) of the MoJ who shall effect the legal documentation in the name of the OJC;
- f. not dispose of assets having a realisable value in excess of £10,000 without the prior approval in writing of the MoJ;
- g. keep a separate record, by using the Ministry's fixed asset register, of all acquisitions and disposals of fixed assets which meet the criteria set in MoJ's Finance Manual Section 12, including acquisitions and disposals for which the MoJ's approval has been obtained;
- h. in regard to the purchase and custody of stores and equipment, maintain adequate inventories giving sufficiently detailed information of such stores and equipment, which shall be available for inspection by the MoJ or its auditors on request;
- i. not enter into any contracts for consultancy services in excess of £20,000 without prior MoJ approval in writing. For this purpose consultancy services for IT contracts should be regarded as part of the total sum of the IT contract;
- j. make purchases that provide value for money, showing effective use of resources, avoiding conflicts of interest; never using public money for private benefit.

Claims register and receipts

- k. maintain a claims register to record any sums due to the OJC and not abandon any such claims or remit any receipts, except by writing off in accordance with paragraphs o-r below;
- l. retain annual receipts up to a set level agreed each year with the MoJ's Finance Officer and apply them generally against its resource consumption.

Hospitality register and entertainment

- m. Maintain a record of gifts and hospitality, both given and received, and inform the MoJ before any gift or donation is contemplated and before any hospitality in excess of an annual allocation of £2,000 is incurred.

Contingent liabilities

- n. not incur any loan or contingent liability whether implicitly or by entering into any indemnity or guarantee to a third party or issue any letter of comfort, without the agreement of the MoJ.

Fraud, write-offs and special payments

- o. in the event that any instances of fraud, suspected fraud or financial irregularity arise, notify the MoJ in accordance with the requirements of the MoJ's Fraud Policy and Response Plan;
- p. not write off any losses, whether of money, value of assets lost, stolen or damaged or receipts foregone in excess of £100 and special payments above £2,000 without the prior approval of the MoJ in writing and maintain a record of such losses as they arise, for inclusion in OJC's accounts and notification to the MoJ in accordance with the requirements of the MoJ's Finance Manual, Section 8;
- q. not make any special payments, whether ex gratia arising from maladministration within OJC or otherwise without first obtaining the approval of the MoJ in writing. In the event such approval is given OJC will meet such payment of OJC's resources, and keep a record of all such payments for inclusion in OJC's accounts and notification to the MoJ in accordance with the requirements of the MoJ's Finance Manual, Section 8;
- r. abide by the rules contained in the MoJ's Finance Manual, Finance Bulletins and any HM Treasury ruling (for example those contained in Government Accounting and 'Dear Accounting Officer' letters).

Availability of records

- s. make available to the MoJ or DJO staff or the staff of the National Audit Office all records on request where there is a business need and subject to section 139 of the Act.

Statements of financial responsibility

- t. have suitable arrangements in place which allows him/her to nominate other offers to act in his/her name and/or authorise them to incur expenditure on behalf of OJC, provided he/she issues them with a clear financial authority and payment authorisation to act in the manner designated. Statements of financial responsibility should accord with the MoJ's Finance Manual, Section 7; and

Audit

- u. have suitable arrangements in place for internal audit and ensure that these accord with the objectives, standards and practice set out in the Government Internal Audit standards. Such arrangements will currently be carried out by the MoJ Internal Assurance Division as one of the services provided under *Annex B* of this Memorandum of Understanding.