

# The system for handling magistrates' conduct, pastoral and training matters

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## Section I: The system and what it deals with

### Part I: Introduction

#### **Purpose of this section**

- I.1.1 This section explains the system for handling allegations of misconduct by magistrates, and sets out the procedures for doing so. Section 2 contains rules and regulations made by the Lord Chief Justice with the Lord Chancellor's agreement to govern the procedures. In particular, it contains the rules for, and guidance on, the initial investigation of complaints against magistrates made under regulation 9 of the Judicial Discipline (Prescribed Procedures) Regulations 2006, and of cases referred to an Advisory Committee by the Lord Chancellor or Lord Chief Justice under regulation 13, until the point at which the Committee reports to them to enable them to take decisions under Parts Four and Six of the regulations on:
- (a) whether the case should be dismissed with no further action;
  - (b) whether a judicial investigation is required; and if so, how the investigation should be carried out; and what matters should be considered in that investigation;
  - (c) whether disciplinary action should be taken without further investigation and, if so, what disciplinary action should be taken; and
  - (d) whether, in addition to or without a judicial investigation, some other action should be taken.

#### **The variety of complaints**

- I.1.2 Criticism of a magistrate's behaviour, in or out of court, may come from a variety of sources. These can include fellow magistrates, participants in court proceedings, members of the public or the press. Some conduct issues, for example a conviction or a formal caution, may come from official sources such as the police or the Crown Prosecution Service. Complaints may be received by a Chair of the Bench, the BTDC or a Panel; a Clerk to the Justices; an Advisory Committee or Sub-Committee; the Office for Judicial Complaints (OJC) or, in the case of a reference under regulation 13, by the Lord Chancellor and the Lord Chief Justice themselves. In each case complaints which raise allegations of misconduct against a magistrate should always be directed to the Advisory Committee through its Secretary, and as quickly as possible (see paragraph 2.2.1 of the rules).

### **Grievance Procedures**

I.1.3 The Department for Constitutional Affairs (DCA) and the Judicial Office for England and Wales (JO) have established grievance procedures for dealing with:

- complaints of discrimination from judicial office holders;
- other disputes involving judicial office holders; and
- complaints by members of staff against judicial office holders.

These will be in force on 3 April 2006. Complaints which fall into these categories should not normally be considered under the regulations and rules until the grievance procedures have been exhausted. If a case appears to be exceptionally serious or complex, advice from the OJC should be sought.

### **Who can deal with complaints**

I.1.4 Allegations of misconduct are investigated on behalf of the Lord Chancellor and the Lord Chief Justice by Advisory Committees and their support staff, and staff in the OJC. Bench Chairs often have to be involved with minor complaints as part of their pastoral responsibilities, described in Section 3. In appropriate cases, they may delegate this to panel chairs. Occasionally, staff in the DCA or in the JO will also need to be involved, to assist the Lord Chancellor and the Lord Chief Justice in the discharge of their responsibilities. No other persons are authorised to handle conduct matters.

### **Following these procedures**

I.1.5 The Lord Chancellor's and the Lord Chief Justice's disciplinary powers can only be exercised if the procedures prescribed by the regulations and rules have been complied with in all material respects. Failure to follow them could leave any decisions by the Lord Chancellor and Lord Chief Justice open to challenge by way of judicial review. It is therefore important that when Advisory Committees are unsure of whether or how some aspect of the procedures might apply to the circumstances of an individual case they should seek advice from the OJC. The procedures in these rules should not be varied or adapted. Advice on how they might be applied to particular situations can be obtained from the OJC.

### **Enquiry number**

I.1.6 In any case of doubt advice on these procedures should always be sought from the OJC enquiry number – 020 7189 2937.

### **Timescales**

- I.1.7 The targets set out in the rules and guidance, although not formal timelimits under either the regulations or rules, provide a framework to help ensure that all conduct matters are dealt with expeditiously. Investigations can be stressful to those concerned and every effort should be made to remain within the targets laid down.

### **Misconduct**

- I.1.8 Where the term *misconduct* is used in these rules it includes conduct which, in the eyes of the community as a whole, reasonably calls into question a person's suitability to sit as a magistrate.

### **Expectations**

- I.1.9 The Lord Chancellor and the Lord Chief Justice have a firm expectation that magistrates, like all other judicial office holders, will conduct themselves in such a way as to command the confidence of the communities they serve.
- I.1.10 Magistrates must abide by the terms of the judicial oath which they swore on appointment (see below) and by the declaration and undertaking which they signed (the current text is at *Annex A*).

#### **Judicial oath**

I, ... , do swear that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second in the office of Justice of the Peace for ... , and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will. So help me God.

- I.1.11 The Lord Chancellor and Lord Chief Justice expect that all matters concerning the conduct of magistrates will be dealt with:
- expeditiously (see *Timetable for conduct and disciplinary matters* at *Annex B*)
  - sensitively (see *Guide to confidentiality* at *Annex C*)
  - impartially
  - with full regard to the independence of the judiciary.

## **Natural justice**

I.1.12 In exercising their disciplinary powers the Lord Chancellor and the Lord Chief Justice will act only for good cause and will always observe the principles of natural justice. Advisory Committees should similarly always bear those principles in mind.

### **The principles of natural justice**

These principles require any decision-making procedure:

- to be unbiased and in good faith
- to be fair, by providing, amongst other things, the individual with the case against them, and by giving the individual an opportunity to be heard
- to include any reasons for the decision.

## Part 2: Roles and responsibilities

This part sets out the respective roles of the Lord Chancellor and the Lord Chief Justice and the Advisory Committees in handling allegations of misconduct. The related responsibilities of Bench Chairs are dealt with in Section 3.

### **OVERVIEW**

#### **Principle**

1.2.1 The Lord Chancellor and Lord Chief Justice are together responsible for providing a system for considering and determining complaints of misconduct against the judiciary. 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.

#### **Functions of the Lord Chancellor and Lord Chief Justice**

##### **(a) Joint**

1.2.2 In relation to magistrates' conduct issues, the Lord Chancellor and the Lord Chief Justice are jointly responsible for:

- the operation of the system, including the supervision of the OJC;
- the appointment of investigating judges and any Review Body;
- setting and amending the terms of reference for any judicial investigation;
- the final decision in relation to individual complaints not dismissed by the Advisory Committee or the OJC;
- in particular, deciding, in agreement with the other, whether to uphold a complaint or make any adverse disciplinary finding and what, if any, disciplinary action to take.

##### **(b) Each of the Lord Chancellor and the Lord Chief Justice**

1.2.3 Each may decide (in agreement with the other, or separately) to:

- require that there be a judicial investigation;
- refer a case to a Review Body;
- refer a case, a series of cases or an issue to the Ombudsman.

##### **(c) The Lord Chancellor**

1.2.4 The Lord Chancellor is responsible for:

- accounting to Parliament for the operation of the complaints and discipline system (but not for the outcome of cases, or for actions taken in individual cases by him or the Lord Chief Justice);

- agreeing to the regulations and rules which the Lord Chief Justice makes to govern the system and managing any Parliamentary procedures required in connection with them;
- removing a magistrate, with the agreement of the Lord Chief Justice:
  - *Section 11, Courts Act 2003* provides that the Lord Chancellor may remove a magistrate from office:
    - on the ground of incapacity or misbehaviour;
    - on the ground of a persistent failure to meet such standards of competence as are prescribed by a direction given by the Lord Chancellor;
    - if he is satisfied that the magistrate is declining or neglecting to take a proper part in the exercise of his functions as a justice of the peace;
- providing and resourcing an effective and efficient complaints secretariat; and providing any other resources which he agrees may be required in the course of investigations or to support a Review Body.

#### **(d) The Lord Chief Justice**

1.2.5 The Lord Chief Justice is responsible for:

- with the Lord Chancellor's agreement, making the regulations and rules which govern the system;
- the imposition (personally, or through an appropriate person chosen by him) of any formal sanctions short of removal which have been agreed between him and the Lord Chancellor;
- *Section 108 of the Constitutional Reform Act 2005* provides that, with the agreement of the Lord Chancellor, and after following the procedures prescribed by these rules and the regulations, the Lord Chief Justice may:
  - give a judicial office holder (which includes a magistrate) formal advice, or a formal warning or reprimand;
  - suspend a judicial office holder from judicial office for any period in which the judicial office holder is subject to criminal proceedings, is serving a sentence imposed in criminal proceedings, or has been convicted of an offence and is subject to proceedings prescribed by these rules and regulations and in relation to the conduct constituting the offence;
  - suspend a judicial office holder from judicial office for any period if the judicial office holder has been convicted of a criminal offence, it has been determined under the procedures prescribed by these rules and regulations that the judicial office holder should not be removed from office, and it appears to the Lord Chief Justice, with the agreement of the Lord Chancellor, that the suspension is necessary for maintaining confidence in the judiciary; or
  - suspend a judicial office holder for any period during which he or she is under investigation for an offence or is subject to the procedures prescribed in these rules and regulations;

- any associated deployment issues;
- nominating a representative to participate in the selection of the Head of the OJC, and approving any proposals by the Lord Chancellor to extend or curtail his or her contract;
- the exercise of his existing informal powers to guide or counsel any judicial office holder (as preserved by subsection 108(3) of the Act).

### **Advisory Committees and Bench Chairs**

- 1.2.6 The Lord Chancellor and the Lord Chief Justice take decisions on disciplinary action having considered advice from the **Advisory Committees on Justices of the Peace**. Advisory Committees are therefore responsible for investigating allegations which might lead to disciplinary action.
- 1.2.7 **Bench Chairs** have a pastoral role. They deal with complaints and behaviour matters that are unlikely to lead to disciplinary action.

### **Delegation**

- 1.2.8 The Lord Chancellor has decided that he will deal personally with all cases which Advisory Committees refer to the OJC. The Lord Chief Justice has decided that he will delegate to a High Court judge, currently Mr Justice Pitchers, his responsibilities in relation to magistrates' conduct.

### **The Role of the Advisory Committee**

- 1.2.9 The Committee's role is to advise the Lord Chancellor and the Lord Chief Justice. It is responsible for handling any matter which brings into immediate question the possible exercise of their disciplinary powers.
- 1.2.10 The Advisory Committee Chair (or Deputy) will handle all disciplinary matters in the first instance, with the advice and assistance of the Secretary.
- 1.2.11 Where a matter falls to be investigated the Chair (or Deputy) will appoint a conduct investigation panel which will report, as necessary, to the Lord Chancellor and the Lord Chief Justice (see Section 2, paragraphs 2.7.1-18).

### Part 3: Record keeping: complaints and conduct matters

- I.3.1 Written records on complaints and conduct matters will be kept by the Secretary to the Advisory Committee. All such records (including tape-recordings) will be securely stored in court premises or on premises occupied by the Advisory Committee.
- I.3.2 The Secretary to the Advisory Committee should open a separate file for each complaint or conduct matter received. Documents relating to this complaint should be placed on the file and will include:
- a copy of the original complaint or allegation, including any statements by third parties;
  - the magistrate's response;
  - the transcript and report of the conduct investigation panel;
  - the concluding correspondence (e.g. letters from the Chair of the Advisory Committee, the OJC, the Lord Chancellor or the Lord Chief Justice to the magistrate recording the outcome);
  - copies of all other relevant documents, e.g. any supporting evidence, correspondence with the complainant or the OJC, or advice to the Bench Chair or the Chair of the BTDC.
- I.3.3 Where the complaint has been substantiated, the papers may be kept by the Secretary to the Advisory Committee with all other records relating to that magistrate's appointment and status as a magistrate (e.g. declaration and undertaking, requests for leave of absence etc) in accordance with the Lord Chancellor's directions on records retention.<sup>1</sup>
- I.3.4 Where, however, the complaint has been dismissed, with or without a conduct investigation panel, the Secretary to the Advisory Committee should hold these papers on a separate file and destroy them three years after the file was last amended.
- I.3.5 There will occasions when Chairs and members of Advisory Committees will need to hold records at their home address, for example to allow them to study them in advance of a conduct investigation hearing. However, in view of the personal and confidential nature of the material, they should not keep records relating to individual magistrates at their home address for longer than is absolutely necessary. Therefore all records should be returned to the Secretary to the Advisory Committee immediately after the Chair or Advisory Committees members have completed their action and those copies should be destroyed.
- I.3.6 The OJC will retain copies of papers relating to complaint cases which Advisory Committees bring to its attention.

<sup>1</sup> In cases determined by the Lord Chancellor and Lord Chief Justice after 3 April 2006, the magistrate will have been notified under regulation 27 that the case will be recorded in a form which may be referred to in a future disciplinary proceedings. In cases before this date, reference in disciplinary proceedings should only be made to cases which the Lord Chancellor had found to be substantiated, in whole or in part.

### **Reporting of statistics on conduct related complaints**

- I.3.7 The OJC is required by the Lord Chancellor and the Lord Chief Justice to provide them with regular statistical reports on the number and type of complaints about judicial office holders that have been received. To enable the OJC to do this, the Advisory Committee Secretary is asked to provide, by the end of March and the end of October, a statistical breakdown of complaints about the conduct of magistrates in their area received in the previous 6 months. This breakdown should include the:
- total number of complaints received
  - the number of complaints which have been dismissed
  - the number of complaints which have been investigated by a conduct investigation panel
- I.3.8 Any Advisory Committee unable to provide this information should contact the OJC for further assistance and guidance.

