

Section 2: The rules and regulations

Complaints (Magistrates) Rules 2006

The Lord Chief Justice of England and Wales, in exercise of his powers under section 115 and 117 of the Constitutional Reform Act 2005¹, and with the agreement of the Lord Chancellor, makes the following rules —

Part I: Investigation process

2.1.1 This Section contains a detailed guide to each stage in the investigation process. A one-page summary is shown at *Annex B*.

Making a complaint

- 2.2.1 Complaints about misconduct should be made to the local Advisory Committee or its Secretary. Where a complaint has been made elsewhere (for example, to the Bench Chair or the OJC) it should be forwarded as quickly as possible to the relevant Advisory Committee.
- 2.2.2 The Advisory Committee should disregard the forwarding period when calculating whether or not the complaint is made within time, where it is satisfied that it was reasonable for a complainant who had not appreciated the terms of regulation 9(1) to send the complaint to the original recipient.
- 2.2.3 Complaints must normally be made in writing. Where someone who wishes to make a complaint first raises it by speaking to the Advisory Committee Secretary (or any other person) the complainant should be told to put it in writing before it can be looked into further. Special arrangements may, however, be made for anyone who cannot write down a complaint, for example because of language difficulties or disability. All complaints must include specific details of the grounds for the complaint.

Timescales

- 2.2.4 Complaints must be made in reasonable time. Regulation 4 requires that complaints received more than 12 months after the matters complained of, or in the case of a complaint relating to a continuing state of affairs, more than 12 months after it ended, must be dismissed by the Advisory Committee. Under regulation 5, the Advisory Committee has a discretion to extend that time limit where there is a good reason to do so.

¹ 2005 c.4

Stage 1: Deciding where the complaint should be dealt with

Target

A decision should be made on who will handle the complaint *and* the complaint should be passed to the relevant person within *three working days* of receipt.

Is the complaint an allegation of misconduct?

- 2.3.1 Depending upon the nature of the complaint, it will be dealt with by the Bench Chair or the Advisory Committee. It should be passed to the correct person as soon as possible.
- 2.3.2 The Chair of the Advisory Committee is responsible for deciding whether a complaint should be dealt with by the Advisory Committee, or sent to the relevant Bench Chair. He or she may wish to consult the Bench Chair before making a decision. In particular where an Advisory Committee receives a complaint relating solely to the competence of a magistrate, it should be referred to the BTDC. Where a complaint, however, raises issues of both conduct and competence, the Advisory Committee should proceed to determine the issue of conduct, prior to the BTDC considering the competence issues. Paragraphs 3.4.1-5 set out guidance on complaints to be handled at bench level.

OJC advice

- 2.3.3 If there are any doubts as to whether the complaint raises questions of misconduct, the Chair or Secretary of the Advisory Committee should consult the OJC.

Target

Complaints should be passed to the appropriate person within *three working days* of receipt.

- 2.3.4 Advisory Committees investigate and report to the Lord Chancellor and Lord Chief Justice to enable them to take decisions under Parts Four and Six of the regulations on any complaint involving allegations which if established would require consideration to be given to a magistrate being removed from office, or formally advised, warned or reprimanded. They also report to them on any circumstances which might require a magistrate to be suspended.^{2, 3, 4}

² This will include cases which:

- bring into question the suitability of the magistrate to sit in judgement on others;
- involve refusal to sit on certain kinds of case or with certain other magistrates;
- expressions of opinion which call into question the magistrate's willingness to administer justice according to law;
- a complaint of racist, sexist or other forms of discrimination, whether on or off the Bench; or offensive conduct towards others (cases in this category should always be reported to the OJC).

- 2.3.5 The person who made the complaint should be told whether the matter is being handled by the Bench Chair or the Advisory Committee. The complainant should be given a name and contact details for further information. This should take place at the same time the complaint is passed to the appropriate person.
- 2.3.6 Matters handled at Advisory Committee level should be dealt with by the Chair (or a Committee member nominated to act on the Chair's behalf) in consultation with the Secretary. The Chair (or nominated deputy) is able to act on behalf of the Committee itself. The Secretary should therefore bring the matter to the Chair's immediate attention.
- 2.3.7 The Advisory Committee should pass to the Bench Chair any complaint which it would be more appropriate for the Bench Chair to deal with.
- 2.3.8 Advice should always be sought from the Secretary to the Advisory Committee in any case where there is doubt as to whether disciplinary issues are involved. The Secretary may in turn wish to seek advice from the OJC.
- 2.3.9 In all cases it is essential that a careful record be kept both of the complaint itself and of all actions subsequently taken. (Further details on record keeping are set out in paragraphs 1.3.1-6).
- 2.3.10 Under no circumstances should action be taken which might reasonably be thought to pre-empt the eventual outcome. For example, nothing must be said which might appear to suggest the magistrate should resign before the Lord Chancellor and the Lord Chief Justice reach a decision.

³ The Lord Chief Justice has overall responsibility for the welfare, training and deployment of the judiciary. Bench Chairs are responsible at a local level for magistrates' welfare, training and deployment, and giving informal advice or guidance. They will counsel and advise magistrates about issues which can be handled satisfactorily at bench level, including those which require a reference to the Bench Education and Training Committee. These will include:

- complaints of a relatively minor and isolated nature;
- an unwise remark on or off the Bench;
- inappropriate but not offensive conduct towards others; and
- late arrival for sittings or a failure to attend without notifying the Clerk and providing an adequate explanation.

Bench Chairs are also responsible for dealing initially with complaints which raise questions of a medical nature which may prevent a magistrate from continuing to sit. These should, however, be discussed with the Judicial Office if it appears that there are issues which cannot be resolved locally.

⁴ Any case where a magistrate is involved in other court proceedings always include a pastoral element. Magistrates must report all such involvement to the Bench Chair or the Justices' Clerk, and the Bench Chair should discuss with the magistrate whether there are issues in the case or the magistrate's individual circumstances which might make it advisable not to sit. If that discussion indicates to the Bench Chair that questions arise as to the magistrate's character or suitability to remain in office, or the circumstances are such that the Lord Chief Justice might need to exercise his powers to suspend a magistrate, they should discuss them with the Chairman of the Advisory Committee. Further guidance on these issues can be found in paragraphs 3.6.1-10.

Stage 2: Initial consideration of a case

This section sets out the steps which an Advisory Committee should follow once it has been decided it will handle the complaint.

Key points

- Decide whether the complaint should be dismissed or be investigated further
- If it is dismissed, inform the subject of the complaint (“the magistrate”) and the complainant of the decision
- If it is to be investigated, write to the magistrate with details of the complaint
- In some circumstances it may be appropriate for the magistrate to stop sitting whilst the matter is under investigation

Target

A decision on whether the complaint can be investigated should be made *and* the magistrate concerned should be provided with a copy of the complaint within *5 working days* of receipt.

- 2.4.1 The Advisory Committee should first decide whether the complaint is one which can be investigated. It should start by ascertaining the facts of the case, including, where relevant, details of a conviction or of a police caution. Its aim should be to assemble sufficient information to determine whether a case should be dismissed under paragraph 2.4.3 or investigated further.
- 2.4.2 It is not necessary to ask complainants for permission to show a complaint to the magistrate concerned. Unless there is evidence to suggest otherwise, it is assumed that submission of a complaint implies consent to disclose it to the magistrate.
- 2.4.3 Unless there are reasons why it believes that a complaint should be investigated, the Advisory Committee must dismiss a complaint, or part of a complaint, if it falls into any of the following categories:
- (a) it does not adequately particularise the matter complained of;
 - (b) it is about a judicial decision or judicial case management, and raises no question of misconduct;
 - (c) the action complained of was not done or caused to be done by a judicial office holder;
 - (d) it is vexatious;
 - (e) it is without substance or, even if substantiated, would not require any disciplinary action to be taken;
 - (f) it is untrue, mistaken or misconceived;
 - (g) it raises a matter which has already been dealt with, whether under these regulations or otherwise, and does not present any material new evidence;
 - (h) it is about a person who no longer holds any judicial office;

- (i) it is about the private life of a judicial office holder and could not reasonably be considered to affect his suitability to hold judicial office;
 - (j) it is about the professional conduct in a non-judicial capacity of a judicial office holder and could not reasonably be considered to affect his suitability to hold judicial office;
 - (k) for any other reason it does not relate to misconduct by a judicial office holder.
- 2.4.4 The Advisory Committee may not dismiss a complaint under paragraph (l)(a) unless it has given the complainant a reasonable opportunity to provide adequate particulars of the complaint.
- 2.4.5 Where it appears that a complaint is liable to be dismissed under paragraph 2.4.1, the Advisory Committee may delegate the dismissal to its Chair or to administrative staff.
- 2.4.6 The magistrate and the complainant should be informed of the decision; and a copy of the letter and supporting papers should be kept locally. (Further details on record keeping are set out in paragraphs 1.3.1-6). Every effort should be made to explain to people who are dissatisfied with a magistrate's decision, or with the way a magistrate has conducted proceedings, that the complaints and discipline system cannot change the outcome of the case in any way. Where they think that is necessary, they should be advised that it is a matter for them to decide whether they should take legal advice and appeal to a higher court if so advised.
- 2.4.7 Where the complaint falls to be investigated a copy of the complaint and any supporting papers should be sent to the magistrate, with a copy of this document setting out the complaints procedures. This will normally be done by the Secretary to the Advisory Committee.
- 2.4.8 The magistrate should be asked for comments or an explanation in writing within 10 working days. A specific request for further time should be considered sympathetically. Copies of the complaint (and any supporting papers) should also be sent to the Bench Chair, together with a copy of the letter seeking the magistrate's comments.
- 2.4.9 In some cases it may be appropriate for the magistrate to abstain from sitting, or discharging any other magisterial duty, until the complaint has been resolved. Where the Advisory Committee considers it is possible that the circumstances of the complaint might give rise to a risk of the magistracy being brought into disrepute or the magistrate's own integrity, authority or standing being called into question if he or she sat whilst the matter was outstanding, they should report the matter to the Bench Chair, who will discuss it with the magistrate concerned. Where they consider the circumstances are such that the Lord Chief Justice might need to exercise his powers to suspend a magistrate they should send a report to the OJC. In such cases, the Advisory Committee Chair should consult the Advisory Committee Secretary, the Bench Chair and the Justices' Clerk.

2.4.10 Where the Advisory Committee requires information from third parties – e.g. the legal adviser's recollection of remarks in court – it should be obtained at this stage. Such information should be copied to the magistrate immediately it is received and no later than one working day before the hearing, either by delivering it in person or sending it by registered post. See *Annex C: Guide to confidentiality*.

2.4.11 The Secretary should notify the OJC and supply details of the complaint.

2.4.12 In all cases the Secretary to the Advisory Committee, as appropriate, should acknowledge the complaint and tell the complainant what procedure will be followed and whom to contact for advice.

Stage 3: Starting an investigation

This section sets out the procedures which Advisory Committees should follow after they have received the magistrate's written comments or explanation in order to carry out an investigation which will enable the Lord Chancellor and Lord Chief Justice to consider the case under Parts Four and Six of the regulations. It describes the procedure for appointing a conduct investigation panel and how panels must be constituted.

This section also describes the role of the Secretary to the Advisory Committee in conduct investigations.

Key points

The Advisory Committee Chair should consider the magistrate's explanation, and determine whether the complaint should be dismissed or investigated further —

- If the complaint is dismissed, the Chair should inform the magistrate and the complainant
- If the complaint is to be investigated further, the Chair should appoint a conduct investigation panel
- Where the magistrate fails without good reason to respond to the request for comments, or to agree a hearing date or attend a hearing, the matter will be considered on the papers

Target

A conduct investigation hearing should take place within *20 working days* of the receipt of the magistrate's written comments or explanation. (This target will only be extended in exceptional circumstances e.g. sickness or other unavoidable absence or incapacity.)

- 2.5.1 The magistrate's written comments or explanation should be passed first to the Chair of the Advisory Committee, who will determine whether or not the magistrate's response provides a sufficient answer to the complaint. Where it does, and the Chair decides to dismiss the complaint, the Chair should write to the magistrate and the complainant notifying them of the outcome. Papers relating to the complaint should be kept only on the file relating to the complaint (see paragraphs 1.3.1-6). These may not be taken into account in further disciplinary proceedings, and this must be clearly stated to the magistrate.
- 2.5.2 Where the Chair has decided that the complaint should be dismissed, but that there are pastoral or training issues, he or she should refer the matter, after discussing it if necessary, to the Bench Chair or the Chair of the BTDC as appropriate for them to take the issues forward with the magistrate. The Justices' Clerk should also be consulted and kept informed of any action taken.
- 2.5.3 Where the magistrate's response does not provide a sufficient answer to the complaint, the Chair of the Advisory Committee should appoint a conduct investigation panel to undertake a hearing.
- 2.5.4 An Advisory Committee conduct investigation panel comprised of three or four people drawn from the Advisory Committee must undertake the hearings. If this is not possible a member may be drawn from a Sub-Committee. The panel should normally consist of:
- A Chair who may be the Chair of the Advisory Committee or the Chair's nominee, and who must be a member of the Advisory Committee
 - Two or three members who, as far as practicable, are not members of the same Bench as the magistrate being seen and in any event at least one of whom must be from a different Bench. Where an Advisory Committee covers a single local justice area, one magistrate member must be drawn from a neighbouring Advisory Committee
 - One member should be a non-magistrate member of the Advisory Committee

In exceptional circumstances, e.g. where there is a potential conflict of interest, where the Advisory Committee has raised the complaint or where Advisory Committee members are party to the complaint, it may be appropriate for the investigation to be conducted by a panel from a different Advisory Committee. Advice may be obtained from the OJC.

- 2.5.5 The Secretary should write to the magistrate, on the Chair's behalf, inviting him or her to attend a conduct investigation hearing on a date within 20 working days from the date on which the written comments or explanation were received. The letter should make it clear that the magistrate may be accompanied, for example, by a legal adviser. It should also ask for details of any third party who the magistrate wishes to provide evidence on his or her behalf. (When setting a date for the hearing, the Secretary should be sure to allow sufficient time for any witnesses to be heard *and* for the panel to consider its findings and recommendations.)
- 2.5.6 When writing to the magistrate, the Secretary should also invite him or her to submit statements from anyone able to provide evidence on his or her behalf. Such statements may be received at any time before the hearing. However, it would be helpful if they were submitted as quickly as possible as the panel will need to determine whether or not to invite those concerned to give evidence in person.
- 2.5.7 The Secretary should also consider whether there are records on the magistrate's file which might need to be taken into account at the conclusion of the case.⁵ If so, the Secretary should write separately to the magistrate explaining that he or she needs to prepare any such papers for submission to the conduct inquiry panel, but only if they reach a decision that the complaint has been substantiated, and move on to consider what advice they will offer to the Lord Chancellor and Lord Chief Justice on any disciplinary action to be taken (see paragraph 2.8.3). The Secretary should emphasise that the panel will not see the material until that point, and ask whether there are any representations as to the accuracy of the facts the magistrate might wish to put in front of the panel should the complaint reach that stage.⁶
- 2.5.8 A conduct investigation hearing should take place within 20 working days from the date on which the written comments or explanation were received. This target will only be extended in exceptional circumstances e.g. sickness or other unavoidable absence or incapacity of *essential* participants such as the magistrate concerned or witnesses. Where delays are likely to occur because insufficient members of the local Advisory Committee or Sub-Committees are available to sit on a panel within this timescale, the Chair should consider asking for assistance from a neighbouring Committee. The OJC should be notified immediately of any likely delay.

⁵ In cases determined by the Lord Chancellor and Lord Chief Justice after 3 April 2006, the magistrate will have been notified under regulation 27 if the case is to be recorded in a form which may be referred to in future disciplinary proceedings. In cases before this date, reference should only be made to cases which the Lord Chancellor had found to be substantiated, in whole or in part.

⁶ The magistrate's comments under 2.5.7 are limited to the accuracy of the records, because he or she will if necessary be given the opportunity to comment on the relevance of such past matters to a current case at a later stage (i.e. if the Advisory Committee finds the complaint substantiated in whole or in part, and the Lord Chancellor and Lord Chief Justice proposed that disciplinary action should be taken, or the case recorded in a form which may be referred to in future disciplinary proceedings).

- 2.5.9 Regulation 6 enables the Chair to direct the conduct investigation panel to consider the matter on the papers, should the magistrate fail, without good reason, to respond to the request for written comments or explanation within 10 working days of the request (or a longer period if one has been granted). Similarly, the panel should consider the matter on the papers if a magistrate fails, without good reason, either to agree a hearing date within 30 working days from the request for comments (or within 40 working days where the circumstances are exceptional) or to attend a conduct investigation hearing which has been arranged. A report and recommendation should be sent to the OJC in accordance with Stage 6 below.
- 2.5.10 Where the magistrate has voluntarily abstained from sitting and discharging any other magisterial duty, the Bench Chair and Justices' Clerk should be informed immediately.
- 2.5.11 In any case where the magistrate has not voluntarily abstained from sitting and discharging any other magisterial duty, particularly when that has been done contrary to the advice of the Bench Chair, the Chair of the Advisory Committee should determine whether to recommend to the Lord Chancellor and the Lord Chief Justice that the magistrate should be suspended pending the conclusion of an inquiry and the Lord Chancellor and Lord Chief Justice's ultimate decision. The Lord Chief Justice's powers to suspend a magistrate whilst he or she is subject to disciplinary proceedings are contained in sub-section 108(7) of the Constitutional Reform Act 2005. It may also be appropriate for a magistrate to abstain from duties where he or she has failed to provide written comments, agree a hearing date or attend a hearing. Before making a recommendation, the Chair will need to consult the Secretary, the Bench Chair and the Justices' Clerk.
- 2.5.12 It should be noted that the Lord Chief Justice reserves the right to provide advice, through OJC and with the Lord Chancellor's agreement, as to whether a magistrate should refrain from sitting independent of any consideration by the Advisory Committee.
- 2.5.13 The Secretary must keep the complainant and the Bench Chair notified of the progress of the complaint.

The role of the Secretary to the Advisory Committee

- 2.6.1 The Secretary to the Advisory Committee (or a nominee) will normally provide administrative support to a conduct investigation panel. The Secretary may not be a member of the panel and, whilst he or she may advise the panel on the application of these rules and on the principles of natural justice, the Secretary may not take part in the panel's deliberations on the merits of the case. The panel should retain a note of any advice the Secretary has provided.

- 2.6.2 There will be occasions when the Secretary feels that there is conflict between his or her day to day role, e.g. as Justices' Clerk, and providing support to a particular investigation. In such an instance, it would be appropriate to arrange for either a Sub-Committee Secretary or a Secretary to a neighbouring Advisory Committee to take on the task. It is important that it cannot be reasonably alleged or perceived that the panel's inquiry and conclusions have been influenced by reason of any conflict of interest on the part of the Secretary.
- 2.6.3 It may also be appropriate to seek assistance from either a Sub-Committee Secretary or a Secretary to a neighbouring Advisory Committee where the Secretary is not available to provide administrative support within the timescale.

Stage 4: Conduct investigation hearings

This section sets out the procedures to be followed at conduct investigation hearings. The principles that must be followed are that —

- The investigation panel should consider all available evidence
- The magistrate should see all the evidence presented and be given an opportunity to comment
- A full record should be taken of proceedings.

Timescale

When setting a date for the hearing, the Secretary should be sure to allow sufficient time for any witnesses to be heard *and* for the panel to consider its findings and recommendations.

- 2.7.1 Any written evidence that has become available since the magistrate was asked for comments or explanation should be copied to him or her immediately it is received, and no later than one working day before the hearing.
- 2.7.2 The Chair should introduce him or herself, and the other panel members by name, indicating whether they are magistrates or not.
- 2.7.3 The Chair should inform the magistrate as to why he or she has been asked to attend and that the panel will be considering only the matters about which the magistrate has been informed. The magistrate should be told that during the hearing he or she will be given every opportunity to comment and to put his or her point of view. The requirements in relation to confidentiality should be explained and the Chair should ensure that the magistrate and all those attending the hearing are in possession of the guidance at *Annex C*.
- 2.7.4 The Chair should assure the magistrate that only the Lord Chancellor and the Lord Chief Justice can remove or discipline a magistrate, although the panel may make recommendations.

- 2.7.5 The magistrate may be accompanied, for example, by a legal adviser. But the magistrate must be informed that the accompanying person should not take an active part in the hearing and that his or her role will be to observe and to advise the magistrate if necessary. Any such person must be asked to respect the guidance on confidentiality.
- 2.7.6 There is no requirement for evidence to be given under oath.
- 2.7.7 Each member of the investigation panel should be in possession of a copy of the complaint, the magistrate's response and any other written evidence (e.g. statements by third parties). No one on the panel should have seen, heard, or be in possession of, evidence which has not been disclosed to the magistrate concerned.
- 2.7.8 The magistrate must be allowed sufficient time to consider any written evidence that has become available since he or she was asked for comments or explanation. The Secretary should ensure such evidence is copied to the magistrate immediately it is received, and no later than one working day before the hearing, either by delivering it in person or sending it by registered post. Where this is not possible, the hearing may only proceed with the magistrate's consent after he or she has seen the evidence and had an opportunity to consider it. In these circumstances, if the magistrate wants more time to consider the evidence the hearing must be adjourned. The hearing must not proceed on the basis that the panel will discount evidence it has already seen.
- 2.7.9 The Chair should check that the magistrate is in possession of all the papers that the panel has by identifying each item. The substantive part of the hearing should begin with the magistrate being asked whether he or she agrees wholly or in part with the facts as set out in the papers.
- 2.7.10 It is essential that members of the panel should not form any view of the facts in dispute before the hearing and should not do or say anything that would give the impression that they have done so.
- 2.7.11 The facts should be checked chronologically if possible, separating those that are agreed from those which are disputed and following up the latter with appropriate questions.
- 2.7.12 The magistrate should then be invited to answer as he or she thinks fit. Members of the panel should not interrupt unless anything the magistrate says is ambiguous. Questions on the magistrate's answers should be noted and questions asked only when he or she has finished. If the magistrate appears to be repeating him- or herself it will, of course, be appropriate for the Chair to indicate that the point has already been understood, inviting him or her to move on. It is, however, essential that the magistrate should feel that a full opportunity has been afforded to present his or her views.

- 2.7.13 In the interests of natural justice, it will sometimes be necessary to hear from others who may be able to provide evidence in relation to the allegations. The panel will determine whether this is appropriate or whether it would be sufficient to rely on statements provided in advance, including any provided on behalf of the magistrate. (The magistrate should provide statements in advance from anyone able to give evidence on his or her behalf. However, in exceptional circumstances – e.g. where information has only recently come to light – the panel may agree to hear evidence from someone of whom they have only been notified on the day).
- 2.7.14 Anyone able to provide evidence in relation to the allegations may be accompanied, if they wish. But unless there are wholly exceptional circumstances, they should be expected to speak for themselves. They should attend the hearing only for the purposes of giving evidence and should not be present during any other part of the proceedings. Those providing evidence, and anyone accompanying them, must be asked to respect the guidance on confidentiality.
- 2.7.15 The magistrate who is the subject of the complaint must be given the opportunity to hear such persons give their evidence and to comment when the person has finished and before they have left the room. The magistrate should not be allowed to cross-examine the person concerned. However, the panel Chair may wish to follow-up any issues which the magistrate's comments have raised.
- 2.7.16 When this process has finished, the magistrate should be asked if there is anything in conclusion which he or she wishes to say to the panel. This might cover both the merits of the current complaint and the content of any recommendation the panel might make. The panel should not ask the magistrate whether he or she wishes to resign.
- 2.7.17 The magistrate and any others involved should be thanked for attending, told that they will be notified by the Secretary, within 5 working days, of the conclusion reached by the panel, and invited to leave.
- 2.7.18 A full shorthand note should be taken of the proceedings. A copy will be sent to the magistrate concerned when the panel has completed its report.

Stage 5: After the conduct investigation hearing

This section sets out the procedures Advisory Committees should follow after a conduct investigation hearing. In summary, the panel must proceed as follows —

- The investigation panel should consider its findings and recommendations immediately after the hearing
- The panel must reach its conclusions solely on the basis of evidence which has been put to the magistrate.

Target

The panel should meet immediately after the hearing and complete its report within *three working days after the hearing*.

- 2.8.1 The investigation panel should meet immediately after the hearing to consider its report. Sufficient time for the panel to consider its findings and recommendations should therefore have been set aside when the timetable for the hearing was drawn up. Other than in exceptional circumstances it should not be necessary for the panel to await receipt of the transcript.
- 2.8.2 The Chair should ensure that the discussion has two clear parts. In the first, the panel should reach a view on the facts. The discussion should begin by identifying the facts not in dispute. The disputed facts should then be isolated and the evidence in support of and against them should be carefully weighed. The panel should decide, if possible, which version of the disputed facts it feels is best supported, noting the reasons. The panel should give reasons for its recommendations, but recommendations should not be supported by any fact or supposition which has not been put to the magistrate.
- 2.8.3 If in this part of the discussion the panel comes to the conclusion that the case is substantiated in whole or in part, it should then move on to consider what advice it will offer to the Lord Chancellor and Lord Chief Justice on whether disciplinary action should be taken, and if so what. It is only at this point that the Secretary should put before the panel any relevant records relating to other conduct matters brought to the magistrate's attention in the past, together with any written representations made by the magistrate about the accuracy of the record.⁷
- 2.8.4 In formulating its recommendations the conduct investigation panel must bear in mind that the Lord Chancellor and the Lord Chief Justice will have full regard to the independence of the judiciary. The Lord Chancellor will not remove a magistrate with the Lord Chief Justice's agreement unless they consider there is no acceptable alternative. In making its recommendation, a panel should therefore have regard to *all* of the Lord Chancellor and the Lord Chief Justice's powers, including the options of requiring a magistrate to receive further training, mentoring and/or appraisal through the relevant local arrangements. If it proposes to recommend such action, it should consider whether or not to recommend that the magistrate should be suspended until training, mentoring and/or appraisal has been completed. The Chairman or Secretary should also discuss with the Justices' Clerk or Chairman of the BTDC whether or not suitable arrangements can be made to deliver the recommended training etc, and within what timescale; and comment on the outcome in its advice to the Lord Chancellor and Lord Chief Justice.

⁷ The magistrate's comments under 2.8.3 are limited to the accuracy of the records, because he or she will if necessary be given the opportunity to comment on the relevance of such past matters to a current case at a later stage (i.e. if the Advisory Committee finds the complaint substantiated in whole or in part, and the Lord Chancellor and Lord Chief Justice proposed that disciplinary action should be taken, or the case recorded in a form which may be referred to in future disciplinary proceedings).

2.8.5 The panel should prepare its report. This should set out the details of the complaint; a summary of the evidence presented; a full explanation of the panel's reasoning and a clear statement of its recommendations. The report must not contain any information which has not been disclosed to the magistrate.

Stage 6: Report to the OJC

This stage sets out the procedures the Advisory Committee should follow once the conduct investigation panel has completed its report.

Key points

- The report should be sent direct to the OJC by the Advisory Committee Secretary; and a copy sent to the magistrate concerned
- A copy should be sent to the Advisory Committee Chair
- The Bench Chair should be told that the report has been sent to the OJC.

Target

The report should be sent to the OJC, and copied to the magistrate concerned and to the Advisory Committee Chair, within two working days of completion.

- 2.9.1 The Advisory Committee should report to the OJC on any case:
- (a) which has been referred to it by the Lord Chancellor or Lord Chief Justice under regulation 13 or 9(4)-(5);
 - (b) where the complaint is about behaviour or remarks of a racist, sexist or other discriminatory nature; or
 - (c) the panel has decided to recommend that the Lord Chancellor and the Lord Chief Justice exercise any of their disciplinary powers.
- 2.9.2 The Secretary should forward the panel's report to the OJC. It should set out in the Advisory Committee's opinion:
- (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.

It should be accompanied by copies of the complaint, the magistrate's response, any other written evidence (e.g. statements by third parties) and the transcript of the hearing. A copy should be sent to the Chair of the Advisory Committee if the Chair was not a panel member. As described above, the report should include a clear statement of the panel's recommendations, and the reasons for them.

- 2.9.3 A copy of the report, with all the supporting papers, should also be sent to the magistrate concerned. He or she should be informed that the OJC will be writing to invite representations.
- 2.9.4 At the same time the Secretary should notify the Chair of the Bench concerned, the Justices' Clerk and the complainant that the conduct investigation panel's recommendation has been forwarded to the OJC.
- 2.9.5 Where the panel concludes the case should be dismissed, it should report its findings to the Chair of the Advisory Committee. The magistrate should also be sent a copy of the report at this stage and the Bench Chair should be informed of the recommendation.

Target

These steps should be taken with two working days of the report's completion.

- 2.9.6 If the Chair agrees that the case should be dismissed, he or she should write to the magistrate and the complainant notifying them of the outcome. Copies of the papers should be placed on the magistrate's personal file, but it should be emphasised to the magistrate that these papers cannot be referred to in any further disciplinary proceedings.
- 2.9.7 The Chair should always, however, consider whether any pastoral or training issues arise. If so, he or she should refer the matter, after discussing it if necessary, to the Bench Chair or the Chair of the BTDC as appropriate for them to take the issues forward with the magistrate. The Justices' Clerk should also be consulted and kept informed of any action taken. Any correspondence with the Bench or BTDC Chairs should be copied to the magistrate.
- 2.9.8 The OJC aims to report the Lord Chancellor and the Lord Chief Justice's response to the Committee within 20 working days of receipt. The magistrate should be informed of the outcome once the recommendation has been returned from the OJC. The Bench Chair should also be informed.

Target

The Chair should reach a decision, inform the magistrate and complainant, and refer any outstanding matters to the Bench or BTDC Chair within 5 *working days* of receiving the panel's report.

Stage 6A: Allegations of lack of competence

Target

The Committee should reach a decision within *five working days* of receiving the panel's report.

- 2.10.1 The assessment of competence in magistrates is a matter for the Bench Training and Development Committees (BTDCs). Where the BTDC has concluded that a magistrate has failed, over a period of time, to reach the required standard so as to call into question his or her capabilities to remain a magistrate, it will instruct the Justices' Clerk to report the matter to the Advisory Committee.
- 2.10.2 The report will take the form of a letter, with supporting documentation, which will include the appraiser's report.
- 2.10.3 The Advisory Committee's role is to satisfy itself that the decision had been reached in a proper manner and that any review procedure has been properly followed and, as necessary, exhausted. The Committee should not concern itself with the substance of the position that has been taken. Its task, in this context, is to act as the guarantor of due process, and if satisfied that that has been followed to make a formal recommendation for removal.

Explanatory note: stages 7-10 explain steps which will be taken by the OJC, the Lord Chancellor and Lord Chief Justice, and by a review body if one is established, and do not form part of the rules

Stage 7: Action by the OJC

This section sets out the steps the OJC will follow upon receipt of a conduct investigation report.

Targets

The OJC will write to the magistrate within *three working days* of receipt of the report.

The magistrate will be asked to comment within *10 working days* of the date of the OJC's letter. (This target will only be extended in exceptional circumstances e.g. sickness or other unavoidable absence or incapacity.)

The OJC will aim to submit advice to the Lord Chancellor and the Lord Chief Justice within *10 working days* of receipt of the magistrate's comments. (This target will only be extended in exceptional circumstances e.g. where it is necessary to seek further information from the Advisory Committee or to obtain legal advice.)

- 2.11.1 On receipt of the conduct investigation panel's report and recommendation the OJC will examine the case to ensure that all the information necessary to make a decision has been obtained and that the procedures set out in these rules have been followed. In some instances the OJC may ask the Advisory Committee for clarification on a contentious issue. Where procedures have not been followed, the OJC may remit the case with advice as to further action.
- 2.11.2 Within three working days of receipt of the report the OJC will write to the magistrate inviting him or her to submit any representations or observations within 10 working days. As the magistrate should have already received a copy of the report from the Secretary to the Advisory Committee, it should not be necessary for the OJC to provide a further copy.
- 2.11.3 The OJC will consider any representations received from the magistrate and submit the report to the Lord Chancellor and the Lord Chief Justice within 10 working days of their receipt. Attached to the report will be a copy of the magistrate's representations and advice on any points raised. In some instances the OJC may first need to seek clarification from the Advisory Committee on a contentious issue or obtain advice from lawyers.
- 2.11.4 If no representations have been received from the magistrate at the end of 10 working days of the invitation to comment, the OJC will submit the report to the Lord Chancellor and the Lord Chief Justice for a decision.

Stage 8: The outcome of the investigation

This section describes the procedure which will be followed when the Lord Chancellor and the Lord Chief Justice determine a conduct case.

Target

The OJC aims to report the Lord Chancellor and the Lord Chief Justice's decision within *20 working days* of submitting the conduct investigation panel's report.

- 2.12.1 The Lord Chancellor and the Lord Chief Justice will reach a decision and this will be passed, as soon as possible, to the magistrate and to the Secretary of the Advisory Committee. The usual process will be for the Lord Chancellor or the Lord Chief Justice or his delegate to write personally to the magistrate concerned and for a copy of the letter to be sent to the Secretary. The letter will include details of the Judicial Appointments and Conduct Ombudsman's jurisdiction, and of how he or she may be contacted.
- 2.12.2 Whether or not the Lord Chancellor and Lord Chief Justice propose to take disciplinary action under section 108 of the Act, the Lord Chief Justice can require the magistrate to receive further training, mentoring and/or appraisal. When that course of action is being considered, the OJC will discuss the proposal with the Justices' Clerk or the Chair of the BTDC, in order to advise the Lord Chief Justice on the practicality of the proposed action, and the likely timescales.

The Lord Chief Justice will write to the magistrate concerned setting out the nature and purpose of the training etc, why it is required and the possible consequences of not undertaking it. He will invite the magistrate to make representations within 10 working days. Once the magistrate has agreed to undertake the training etc, responsibility for ensuring that decision is implemented will be delegated to the Bench Chair (who will need to liaise with the Chair of the BTDC and the Justices' Clerk). The Lord Chief Justice will set a date by which he will expect to be notified of the outcome.

- 2.12.3 Where the Lord Chancellor and the Lord Chief Justice consider it appropriate to impose a more serious penalty than that recommended by the conduct investigation panel, the OJC will notify the magistrate of the Lord Chancellor and the Lord Chief Justice's proposal and seek further representations before the Lord Chancellor and the Lord Chief Justice reach a final decision.
- 2.12.4 The Lord Chancellor and the Lord Chief Justice attach considerable weight to the views of an Advisory Committee conduct investigation panel. They are particularly appreciative of the care, attention and sensitivity that panels display in the handling of conduct matters and they consider it essential that panels should not be inhibited from recommending what they consider to be appropriate.
- 2.12.5 There will be occasions, however, when they may not agree with the recommendation. This may occur where, for example, they determine that the findings are not supported by the evidence, that the recommendations are not commensurate with the misconduct or that the procedures set out in this guidance have not been followed. In other instances they may consider that a different course of action is appropriate in the overall interests of the magistracy.

Possible Stage 9: The Review Body

- 2.13.1 Paragraph 1 of regulation 29 requires the Lord Chancellor and Lord Chief Justice to convene a review body to review a case where:
- (a) they decide to refer the findings of a judicial investigation under Part 5 to a review body;
 - (b) the Ombudsman recommends that an investigation or determination should be reviewed by a review body, and the Lord Chancellor and the Lord Chief Justice accept the recommendation;
 - (c) the Ombudsman sets aside a determination made in a case in accordance with section 111 of the Act and directs that the case is to be referred to a review body; or
 - (d) the subject of the disciplinary proceedings requests the Lord Chancellor and the Lord Chief Justice to refer the case to a review body in accordance with paragraph (2).

- 2.13.2 Paragraph 2 provides that the subject of the disciplinary proceedings may request the Lord Chancellor and the Lord Chief Justice to refer the case to a review body where they notify him under regulation 27 that they propose:
- (a) to take disciplinary action against him, or
 - (b) to record the case in a form which may be referred to in later disciplinary proceedings.
- 2.13.3 The Review Body may consider both the merits of the complaint, and the way in which it has been handled, and may invite further representations from the magistrate and any other interested parties.
- 2.13.4 Any request by a magistrate that a case be referred to the Review Body must be made within 10 days of being notified of the final decision and must state the issues the body is asked to consider. This period should be borne in mind when considering action under the following stages.

Explanatory note: this stage is part of the rules

Stage 10: Implementing the Lord Chancellor and the Lord Chief Justice's decision

This section describes the procedures the Advisory Committee should follow when notified of the Lord Chancellor and the Lord Chief Justice's decision. No action should, however, be taken if the Advisory Committee is notified that the magistrate is considering referring the case to a Review Body, or has done so.

Key points

- The decision should be implemented immediately
- Everyone who needs to know should be told (see *Annex C: Guide to confidentiality*)
- A full record should be kept

Target

Action under this section should start within three working days of receipt of the Lord Chancellor and the Lord Chief Justice's decision.

- 2.14.1 The Secretary to the Advisory Committee should, as a matter of urgency, inform those who need to know the outcome. This will normally include the Advisory Committee Chair, members of the conduct investigation panel, the Bench Chair and the Justices' Clerk.
- 2.14.2 Where the complaint was received locally, the Secretary to the Advisory Committee must send a response to the complainant. The OJC will respond to the complainant in those cases where the complaint was made direct.

2.14.3 Other action will depend upon the nature of the Lord Chancellor and the Lord Chief Justice's decision. Guidance on action to be taken by the Bench Chair or Justices' Clerk is to be found in paragraphs 3.5.15-16 in Section 3.⁸

Date CJ
I agree C
Date

Explanatory note: this section does not form part of the rules

Possible Stage II: The JACO

2.15.1 Section 110 of the Act provides for the magistrate or the complainant to apply to the Judicial Appointments and Conduct Ombudsman (JACO) to review the exercise of disciplinary powers by the Lord Chancellor and the Lord Chief Justice on the grounds that there has been a failure to comply with the prescribed procedures, or some other maladministration. In accordance with the Act provision, 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.

2.15.2 The Ombudsman cannot substitute his or her own decision on the merits of a complaint of judicial misconduct, rebuke or reprimand a magistrate, or decide to trigger procedures for removing a magistrate from office. He or she can, however, if satisfied that the grounds of the complaint are justified to any extent, make recommendations to the Lord Chancellor and the Lord Chief Justice. Such recommendations may include 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. Furthermore, if the JACO decides that any determination is unreliable because of any such failure or maladministration, he or she can set the determination aside (in which case any investigation or review leading to it is to be disregarded and much start afresh).

2.15.3 Advisory Committees will normally be contacted by the OJC where a case has been referred to the JACO, and advised on any action to be taken pending the completion of the review. If the Advisory Committee is informed by the magistrate that he or she is considering referring the case to the JACO, or has done so, they should inform the OJC.

⁸ Where the Advisory Committee would find it helpful, OJC staff will attend at the next available opportunity to help review the handling of the investigation.

Part 2: Maintenance and provision of these rules

- 2.16.1 Responsibility for advising the Lord Chief Justice and the Lord Chancellor in relation to the content of these rules rests with the OJC.
- 2.16.2 The OJC will ensure that Bench Chairs and Advisory Committees (together with Justices' Clerks and Committee Secretaries) are provided with sufficient copies of these Rules, with the rules and regulations, to enable them to perform their duties.
- 2.16.3 Secretaries to Advisory Committees and Justices' Clerks should ensure that copies are also made available to magistrates who are subject to a complaint; magistrates or members of the public who wish to make a complaint and to others involved in conduct and disciplinary matters (e.g. anyone invited to give evidence).

