

Section 3: Pastoral and training matters

Part I: General

The Lord Chief Justice and the Judicial Office for England and Wales (JO)

- 3.1.1 As President of the Courts of England and Wales, the Lord Chief Justice is responsible for the arrangements for the welfare, training and guidance of the judiciary of England and Wales. He has delegated many of those functions to the Senior Presiding Judge and the Presiding Judges for each Circuit, who are assisted in relation to the magistracy by the Magistrates' Liaison Judges. The Lord Chief Justice and his senior colleagues are supported by the Judicial Office for England and Wales (JO).
- 3.1.2 Bench Chairs should consult the JO on pastoral issues which are unusually complex or serious, are likely to cause public controversy, or raise serious questions for the welfare of the Bench or individual magistrates' ability to continue sitting.
- 3.1.3 The Lord Chief Justice's role in relation to disciplinary matters is set out in Section I, paragraphs I.2.2-3 and I.2.5.

The Role of the Bench Chair

- 3.2.1 Bench Chairs have a vital role in maintaining the standards of behaviour and service the public expect of the magistracy, and the collective wellbeing of the bench. In particular, they will:
- themselves handle complaints which involve minor problems of standards of behaviour (see paragraphs 3.4.1-5);
 - receive reports of magistrates' involvement in court proceedings in a private capacity (and related issues), or professional disciplinary proceedings, and advise magistrates on the appropriateness of continuing to sit (see paragraphs 3.6.1-13);
 - give advice to magistrates who are experiencing serious financial difficulties (see paragraphs 3.7.1-4);
 - give advice to magistrates where the circumstances of family or friends might give rise to problems (see paragraphs 3.8.1-9);
 - work with the Chairman of the Advisory Committee in identifying cases which involve possible misconduct, and handle any consequences for the life of the bench;
 - identify those cases which require a reference to the Bench Training and Development Committee; and

- where so provided, they may also have a role in dealing with appeals and grievances arising from BTDC decisions.¹
- 3.2.2 They are responsible at local level for magistrates' welfare, training and deployment and any need to give informal advice or guidance.
 - 3.2.3 In giving advice to individual magistrates, Bench Chairs will need to be aware of the factors which might disqualify a magistrate from further service, or restrict sitting. These factors are set out in Section 7 of the Directions.
 - 3.2.4 In some circumstances, it may be more appropriate for these pastoral responsibilities to be carried out by a Panel Chair (e.g. issues arising in the Family Court). Bench Chairs should refer matters to the Panel Chair which they consider it would be appropriate for them to deal with. Panel Chairs should establish arrangements with the Bench Chair for determining who should deal with matters which come to their attention. Complaints received at local level must, however, always be referred to the Bench Chair not the Panel Chair. Where, however, the Chair of a Panel or of the BTDC receives a complaint direct they must pass it direct to the Bench Chair to determine how it should be dealt with.
 - 3.2.5 Where a complaint is being handled at Bench level, it should be dealt with by the Bench Chair (or Deputy) in consultation with the Justices' Clerk. The Justices' Clerk should therefore bring the matter to the Bench Chair's immediate attention.
 - 3.2.6 Such matters must be dealt with promptly. Experience has shown that major difficulties can arise if minor behaviour or pastoral issues are not dealt with at the earliest opportunity, or if disciplinary matters are not referred to the Advisory Committee straightaway.

Grievance Procedure

- 3.3.1 Under the *Judicial Grievance Protocol*² the Bench Chair also has a responsibility to try and help resolve grievances between magistrates about discriminatory treatment. If a complaint falls within the scope of the grievance procedures, or of the procedures for handling other disputes involving judicial office holders or complaints from members of staff (see paragraph 1.1.3), they should normally be exhausted before disciplinary procedures are invoked. If the matter cannot be resolved informally then the person bringing the complaint may make a formal complaint to the Advisory Committee.

¹ See Section 11 First Revision: MNTI 2 good practice guidance for BTDCs, and BTDC constitutions.

² *Judicial Grievance Protocol: Procedures for dealing with grievances made by judicial office holders regarding discrimination.*

- 3.3.2 The procedures for magistrates to follow if they have a discrimination complaint relating to their treatment when carrying out their judicial duties are set out in the *Judicial Grievance Protocol*. The Justices' Clerk and the Secretary to the Advisory Committee are responsible for determining whether any complaint they receive falls within the provisions of the grievance procedure and, if so, that it is handled accordingly.

Complaints: Pastoral matters or possible disciplinary issues?

- 3.4.1 It is important for the efficient functioning of the Bench that Bench Chairs and the Chairs of Advisory Committees have working and communication arrangements which ensure that quick and accurate decisions are taken on whether a matter should be treated as a pastoral or as a disciplinary one. They might find it helpful to have regular meetings to discuss individual cases and overall approaches.
- 3.4.2 Any complaint which raises questions of the exercise of the Lord Chancellor's and the Lord Chief Justice's disciplinary powers should be referred to the Advisory Committee. The Bench Chair is responsible for deciding whether a complaint received by him or her should be sent to the relevant Advisory Committee. They should consult the Justices' Clerk, and may wish to consult the Chair of the Advisory Committee, before making the decision. 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.
- 3.4.3 Minor behaviour issues which are likely to be more appropriately dealt with by Bench Chairs will include:
- complaints of a relatively minor and isolated nature – which might for example be effectively dealt with by a timely apology;
 - an unwise remark on or off the Bench;
 - inappropriate but not offensive behaviour towards others;
 - late arrival for sittings or a failure to attend without notifying the Clerk and providing an adequate explanation.
- 3.4.4 They should also deal 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 JO if it appears that there are issues which cannot be resolved locally.
- 3.4.5 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.

Part 2: Action by Bench Chairs

This part sets out the steps which Bench Chairs should follow once it has been decided that they will handle the complaint.

Key points

- Decide whether the complaint can be investigated
- Write to the subject of the complaint ('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

Timescale

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.

- 3.5.1 The Bench Chair should first decide whether the complaint is one which can be investigated. The facts must be ascertained. These might include records held at Bench or Advisory Committee level of conduct matters brought to the magistrate's attention in the past which need to be considered with the complaint (even though individually they might fall within the criteria set out in 3.5.2 below). They might also include e.g. details of a police caution.
- 3.5.2 The criteria under which a complaint must be dismissed by the Advisory Committee, and which Bench Chairs should follow, are that 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.

- 3.5.3 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.
- 3.5.4 The complainant should be informed of the decision to dismiss the complaint; 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).
- 3.5.5 Where the complaint falls to be investigated a copy of the complaint and any supporting papers should be sent to the magistrate. The magistrate should also be sent a copy of this document setting out the complaints procedures. This will normally be done by the Justices' Clerk.
- 3.5.6 The magistrate should be invited to a meeting within 5 working days of the complaint being brought to his or her attention. The magistrate should be assured that at this meeting he or she will be given a full opportunity to respond to the matters raised and that a fellow magistrate may accompany him or her if so wished.
- 3.5.7 Care should be taken to ensure that the magistrate is notified in advance and provided with additional copies of any documents which will be referred to in the discussion, in order to ensure that he or she has the opportunity to comment on their accuracy. Where the Bench Chair intends to refer to the records of conduct matters brought to the magistrate's attention in the past, the magistrate should be assured that these matters are not being re-opened and will not feature in any discussion as to the merits of the current complaint. They are relevant only insofar as they may assist the Bench Chair in determining the best course of action to prevent further problems arising.
- 3.5.8 Where the Bench Chair requires information from third parties – e.g. the legal adviser's recollection of remarks in court – this should be obtained at this stage. Such information should be copied to the magistrate immediately it is received. See *Annex C: Guide to confidentiality*.

Meetings with magistrates

Key points

- Bench Chairs should meet with the magistrate in the presence of the Justices' Clerk
- A full note must be kept of any meeting and the magistrate should be given a copy
- Bench Chairs should not do anything which might be misconstrued as disciplinary action

Target

The Bench Chair should invite the magistrate to a meeting as soon as possible and no later than *5 working days* from the Chair's being notified of the matter. (This target will only be extended in exceptional circumstances e.g. sickness or other unavoidable absence or incapacity.)

- 3.5.9 The meeting should take place in private on court premises in the presence of the Justices' Clerk. The magistrate may be accompanied by a fellow magistrate if he or she so wishes. The person accompanying should not take an active part in the discussion but may observe and advise the magistrate if necessary. Any such person must be asked to respect the confidentiality of the meeting.
- 3.5.10 The Bench Chair should begin by outlining the details of the complaint, the circumstances in which it arose and the reasons why, if true, it would give cause for concern. The Chair should then ask the magistrate for comments, encouraging him or her to take time before answering. As a general guideline the magistrate should be invited to:
- give a recollection of events;
 - offer an explanation as to how the complaint may have arisen;
 - examine whether any aspect of his or her behaviour may have appeared to have fallen below the acceptable standard;
 - and if any aspect might have given rise to such a perception, offer an apology for any offence caused, and consider steps to avoid similar problems arising.
- 3.5.11 Where the Bench Chair is satisfied with the magistrate's responses, they should discuss whether any further action is needed. Where the complaint is dismissed, and there is no further action, the case can be closed in accordance with paragraph 3.5.13. Where it is agreed that some further action is required, however, the Bench Chair and the magistrate should agree the next steps. These might include sending a letter of apology to those affected, drawing up an agreed plan of action to avoid further problems arising, or agreeing to receive further training, mentoring and/or appraisal.

- 3.5.12 Only the Lord Chancellor and the Lord Chief Justice have power to take disciplinary action against a magistrate. Bench Chairs and Justices' Clerks must therefore take particular care not to intimidate a magistrate or to appear to usurp the discretion that is vested in the Lord Chancellor and the Lord Chief Justice alone. It is important that Bench Chairs do not take any action following a complaint which could be construed as disciplinary – that is reserved to the Lord Chancellor and the Lord Chief Justice. A Bench Chair may advise or counsel a magistrate as part of his or her pastoral role but not in such a manner as to be seen to amount to a formal admonishment or formal reprimand.
- 3.5.13 A full note must be taken of the meeting and a copy given to the magistrate. (This can take the form of a letter from the Bench Chair to the magistrate, outlining the complaint, reporting the discussion and setting out any agreement on follow-up action.) The magistrate must then be allowed to make comments on the accuracy and substance of the note. The matter can then be regarded as closed. The note, together with the magistrate's comments cannot be referred to in future disciplinary proceedings, and should only be used in any future pastoral discussions as set out in paragraph 3.5.7.

Timescale

The person who made the complaint should be notified of the outcome within *three working days* of the matter being closed.

- 3.5.14 Where the Bench Chair is not satisfied with the magistrate's responses, or considers that they raise the question of the possible exercise of the Lord Chancellor's powers to remove, or the Lord Chief Justice's powers to suspend or formally to advise, warn or reprimand a magistrate, the papers must be forwarded to the Chair of the Advisory Committee. The magistrate should be advised accordingly.
- 3.5.15 If the magistrate fails, without good reason, to meet with the Bench Chair within 10 working days of the complaint being brought to his or her attention, the Chair should immediately refer the matter to the Chair of the Advisory Committee.

Timescale

Where the matter is referred to the Chair of the Advisory Committee the person who made the complaint should be notified within *three working days* of the referral.

Pastoral or training issues arising following an investigation where no disciplinary action is taken.

3.5.16 If the Chairman of the Advisory Committee has agreed that a disciplinary case should be dismissed, but considers that pastoral or training issues arise, he or she will refer the case, after discussions if necessary, to the Bench Chair or the Chair of the BTDC as appropriate for them to take issues forward with the magistrate. The Justices' Clerk will also be consulted and kept informed of any action taken. Any correspondence with the Bench or BTDC Chairs should be copied to the magistrate.

- Sometimes no action will be needed.
- There will be times when it would be appropriate for the Bench Chair to suggest to the magistrate that it might be prudent to refrain from sitting for a period of time.
- Alternatively there will be occasions when it is appropriate for the Bench Chair to meet with the magistrate to counsel or advise them and to draw up an agreed plan of action to avoid a repetition of the complaint. At such a meeting the degree of seriousness attached to the behaviour and the likely outcome were it to be repeated could be made clear to the magistrate. However, care should be taken not to give the impression that the magistrate is being disciplined - the purpose of the meeting would be, as indicated above, to counsel and give appropriate advice.

Action following an investigation which results in disciplinary action being taken

3.5.17 In disciplinary cases where the Lord Chancellor and Lord Chief Justice have reached a decision under Part Six of the regulations, where:

- the Lord Chancellor has, with the Lord Chief Justice's agreement, *removed the magistrate from office* the Bench Chair, in consultation with the Justices' Clerk, will need to take immediate action to remove the magistrate's name from court lists etc. It may be appropriate to issue a statement notifying the Bench that "... has left the Bench".
- the magistrate has been *formally advised, warned or reprimanded* by the Lord Chief Justice, with the Lord Chancellor's agreement, the Bench Chair, in consultation with the Justices' Clerk, should consider whether it would be helpful to meet the magistrate in order to consider steps to avoid a repetition of the complaint. Although this discussion will not be part of the formal disciplinary process, any such meeting should be conducted in the presence of the Clerk; a note should be taken and placed on record (where it may only be used as part of any future pastoral discussions); and the magistrate should receive a copy and be given the opportunity to comment on its accuracy.

- the Lord Chief Justice has directed that the magistrate receive further *training, mentoring and/or appraisal* the Bench Chair, with assistance if necessary from the Secretary to the Advisory Committee, should contact the Justices' Clerk who administers the work of the BTDC (either the Justice's Clerk or the Chair of the BTDC will have been consulted during the decision-making process) and provide him or her with a copy of the panel's report and the Lord Chief Justice's decision. The Bench Chair should ask to be kept informed of the action taken by the BTDC Chair in order that he or she can report back to the Lord Chancellor and Lord Chief Justice via the OJC by the date set.
- the magistrate is to resume sitting following a period of absence he or she should first meet the Justices' Clerk in order for the Clerk to up-date them on any changes that have occurred during the absence and to discuss any training needs.

Record keeping

3.5.18 Written records relating to pastoral matters will be kept on behalf of the Bench Chair by the Justices' Clerk. All such records must be securely stored in court premises.

Part 3: Magistrates involved in court proceedings

- 3.6.1 An important aspect of the Bench Chair's pastoral role is giving advice to individual magistrates, and where appropriate to the Chair of the Advisory Committee or the Lord Chief Justice, where magistrates report that they have become involved in court proceedings in their private capacity.
- 3.6.2 In accordance with the declaration and undertaking signed on appointment (see *Annex A*), magistrates are required to notify their Bench Chair and Justices' Clerk of any criminal, civil or other proceedings in which they become involved. These include proceedings in matters for which a magistrate is liable as an employer.
- 3.6.3 Here, there is always a pastoral element. The Bench Chair should discuss with the magistrate whether there are issues in the case or the magistrate's individual circumstances which 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. In the light of that discussion, the Bench Chair should advise the magistrate whether he or she should continue to sit pending the resolution of the proceedings.
- 3.6.4 If that discussion indicates to the Bench Chair that any aspect of the case requires consideration to be given to the exercise of the Lord Chancellor's and the Lord Chief Justice's disciplinary powers, and in particular, of the Lord Chief Justice's powers to suspend a magistrate; or otherwise raises questions as to the magistrate's character or suitability to remain in office, he or she should discuss it with the Chairman of the Advisory Committee. If there is any doubt about whether the case should be treated as a disciplinary matter, advice should be sought from the OJC. If so, a conduct investigation panel should be appointed to consider the matter. The procedures set out in paragraphs 2.5.1-2.9.8 will apply.

Criminal charges

(i) Pending trial

- 3.6.5 When advising a magistrate who has been charged with any criminal offence whether he or she should continue to sit, the Bench Chair should be aware that the Lord Chancellor and Lord Chief Justice regard it as undesirable that judicial officers who are awaiting trial for an offence of a kind tried in the courts in which they sit should adjudicate pending the outcome of the case. In the case of fixed penalty notices issued in relation to motoring offences this only applies to those who contest the penalty and request a hearing. If a magistrate has any doubt as to whether they should sit, they should contact the JO for advice.

(ii) Serious charges

3.6.6 The Bench Chair must inform the JO (who will pass the information to the OJC) immediately if a magistrate is charged with a serious offence such as murder, manslaughter, rape or other sexual offence, conspiracy, wounding, fraud or theft, or a road traffic offence involving mandatory disqualification. In such cases, the Lord Chief Justice will consider whether the magistrate should be suspended, with the Lord Chancellor's agreement.

(iii) After determination

3.6.7 If the Bench Chair is informed that a magistrate has been convicted of an offence, he or she should inform the JO immediately. The JO will determine, where necessary in consultation with the OJC, whether it is necessary to consider the exercise of the Lord Chancellor's and the Lord Chief Justice's disciplinary powers. The Bench Chair will be informed if the case is to be taken further and of the outcome.

Civil proceedings

3.6.8 Involvement in civil proceedings (including divorce proceedings) does not mean that a magistrate has to stop sitting, but there may be circumstances or factors which would make it advisable for him or her not to continue to sit, generally or in particular classes of case, until the proceedings are concluded or for a period of time thereafter. Such involvement should therefore always be discussed with the Bench Chair.

3.6.9 The Bench Chair should consult the Chairman of the Advisory Committee about any aspect of a case which might raise disciplinary issues or any need for the Lord Chief Justice to exercise his power to suspend a magistrate. They should consider particularly carefully cases where the magistrate is alleged to have acted fraudulently, deceitfully or maliciously. If there is any doubt, the Secretary of the Advisory Committee should consult the OJC.

3.6.10 The Bench Chair and the Chair of the Advisory Committee will need to await the conclusion of proceedings, and any appeal, to determine whether or not any substantiated allegation about the magistrate's behaviour brings into question the possible exercise of the Lord Chancellor's or the Lord Chief Justice's disciplinary powers. If there is any doubt, the Secretary of the Advisory Committee should seek advice from the OJC. If so, a conduct investigation panel should be appointed to consider the matter. The procedures set out in paragraphs 2.5.1-2.9.8 will apply.

Professional disciplinary proceedings

- 3.6.11 Any magistrate involved in proceedings before a professional disciplinary tribunal or other similar body (including disciplinary proceedings by an employer) must immediately inform the Bench Chair or Justices' Clerk.
- 3.6.12 The Bench Chair should consult the Chairman of the Advisory Committee about any aspect of a case which might raise disciplinary issues or any need for the Lord Chief Justice to exercise his power to suspend a magistrate. If there is any doubt, the Secretary of the Advisory Committee should consult the OJC.
- 3.6.13 The Bench Chair and the Chair of the Advisory Committee will need to await the conclusion of proceedings, and any appeal, to determine whether or not any substantiated allegation about the magistrate's behaviour brings into question the possible exercise of the Lord Chancellor's or the Lord Chief Justice's disciplinary powers. If there is any doubt, the Secretary of the Advisory Committee should seek advice from the OJC. If so, a conduct investigation panel should be appointed to consider the matter. The procedures set out in paragraphs 2.5.1-2.9.8 will apply.

Part 4: Financial difficulties

- 3.7.1 A person who is adjudged bankrupt is not legally disqualified from appointment as a magistrate (*Section 265, Enterprise Act 2002*). Magistrates' integrity must, however, both be and appear to be beyond question. The Lord Chancellor will therefore not appoint undischarged bankrupts and he and the Lord Chief Justice expect existing magistrates who become bankrupt to resign.
- 3.7.2 In the first instance, the Bench Chair should meet the magistrate concerned and discuss the matter. The meeting should be conducted along the lines of the procedures in paragraphs 3.5.1-15 above. The Bench Chair should draw the Lord Chancellor and the Lord Chief Justice's views to the magistrate's attention, and may give advice about whether the magistrate should continue to sit, but should take no action which might be construed as an instruction to resign.
- 3.7.3 Where the Bench Chair considers that the circumstances bring into question the possible exercise of the Lord Chancellor or the Lord Chief Justice's disciplinary powers, the matter should be referred to the Chair of the Advisory Committee. If so, a conduct investigation panel should be appointed to consider the matter. The procedures set out in paragraphs 2.5.1-2.9.8 will apply.
- 3.7.4 Where a company of which a magistrate is a director goes into liquidation, the panel may ask OJC to seek more information on the matter from the Insolvency Service.

Part 5: Conduct of relatives or friends

- 3.8.1 There may be occasions when a magistrate is put in a difficult situation because a family member, or a close friend or acquaintance, has become involved in court proceedings or unacceptable behaviour of some kind. In such circumstances the magistrate should immediately report the matter to the Bench Chair and Justices' Clerk and seek their advice.
- 3.8.2 It should not be presumed that the actions of a close relative or friend would necessarily bring a magistrate or the magistracy into disrepute. However, in some cases, it may be in the best interests of the magistrate and the standing of the Bench for the magistrate not to sit from arrest to trial and shortly thereafter or not to adjudicate on cases involving similar allegations to those brought against the relative whilst proceedings are outstanding. However, these questions need to be considered very carefully in each individual case.
- 3.8.3 In all cases the magistrate should meet with the Bench Chair and Justices' Clerk in accordance with the procedures in paragraphs 3.5.1-15 to discuss the most appropriate course of action.
- 3.8.4 Where the magistrate decides not to refrain from sitting (or from adjudicating on cases involving similar allegations) the Bench Chair should notify the JO. The JO will determine, where necessary in consultation with the OJC, whether it is necessary to consider the exercise of the Lord Chancellor's and the Lord Chief Justice's disciplinary powers. The Bench Chair will be informed if the case is to be taken further and of the outcome.
- 3.8.5 As soon as proceedings are concluded the magistrate should report the outcome to the Bench Chair and Justices' Clerk.
- 3.8.6 In cases which have resulted in a conviction, the Lord Chancellor and the Lord Chief Justice take the view that where there is minimal contact with the relative and no condoning of the offence there is no reason why a magistrate should stand down from judicial office. However, on very rare occasions where the conduct of a relative may call into question the impartiality of a magistrate, it may be appropriate for the magistrate to refrain from sitting for a longer period of time. In extreme cases, it may no longer be appropriate for them to hold judicial office.
- 3.8.7 The Bench Chair, in consultation with the Justices' Clerk, should bring any cases which are unusually complex or serious, are likely to cause public controversy, or raise serious questions for the welfare of the Bench or individual magistrate's ability to continue sitting, to the immediate attention of Chair of the Advisory Committee. The Secretary should notify the OJC.
- 3.8.9 Such situations need to be handled with both sympathy and understanding.