



Judicial Conduct  
Investigations Office

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# **Judicial Discipline**

## **Misconduct and recommending sanctions**

**November 2023**

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# Foreword

As Lord Chancellor and Lady Chief Justice, we are jointly responsible for judicial discipline. The Judicial Conduct Investigations Office supports us in our disciplinary roles.

In August 2022, a public consultation on a range of proposed improvements to the judicial disciplinary system resulted in the adoption of a formal definition of the system's purpose:

'The purpose of the judicial disciplinary system is to ensure that allegations of misconduct are dealt with efficiently, fairly and proportionately, and that public confidence in the independence, integrity and good standing of the judiciary is thereby maintained.'

This definition underlines why we take our disciplinary roles so seriously. The public has a right to expect that on the rare occasions when judicial office holders do not meet the high standards of conduct expected of them, action will be taken. We never take the decision to discipline a member of the judiciary lightly. That is why we rely on you, the judges and lay people who consider complaints and recommend the action we should take in response to misconduct, to help us make the right decision in each case.

The guidance in this document will help you in this important work. It is not intended to replace your good judgement or fetter your discretion. You will still need to consider every case on its individual merits. The guidance will enable you to do this in a structured way, which will aid fair and consistent decision-making.

Whether you are new to your disciplinary role or experienced, we ask that you refer to this document whenever you consider a case.



**The Right Honourable  
Alex Chalk KC MP**  
Lord Chancellor & Secretary of State  
for Justice



**The Right Honourable The Baroness Carr  
of Walton-On-The Hill**  
The Lady Chief Justice of England and  
Wales

# Introduction and contact details

1. The Judicial Conduct Investigations Office (“JCIO”) has produced this document. It contains guidance about making findings of misconduct and recommending disciplinary sanctions. It replaces the JCIO’s *Guidance on Recommending Disciplinary Sanctions for Misconduct*, and is for use by:
  - Nominated judges
  - Nominated committee members
  - Investigating judges
  - Disciplinary panels
2. For brevity, these roles will be referred to as ‘fact finders’ and the subjects of disciplinary investigation will be referred to collectively as “office holders” unless reference to a particular judicial office is necessary for clarity.
3. Fact finders’ role in the disciplinary process is set down in statutory regulations and supporting rules (the “rules” and “regulations”). While each role is different, they are all required to:
  - Make findings of fact
  - Decide whether the facts amount to misconduct, and if so
  - Recommend a sanction to the Lord Chancellor and the Lady Chief Justice.

*Note: While we currently have a Lady Chief Justice, the term ‘Lord Chief Justice’ is used in the relevant parts of the Constitutional Reform Act 2005, and in the rules and regulations referred to further below.*

4. This document should be read alongside the specific guidance for your fact finder role, which covers the process up to and including determining the facts of a case. This document should then be used as an aid to decide whether the facts amount to misconduct and, if so, the appropriate sanction to recommend from those set out in section 108 of the Constitutional Reform Act 2005.
5. Nominated and investigating judges and disciplinary panels should contact the JCIO officials referred to below with any queries about this document or any requests for advice. Nominated committee members should contact the secretary of

their conduct advisory committee, who may contact the JCIO for advice if necessary.

Simon Parsons, Head of Operations  
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Please also copy emails to:

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6. The JCIO will keep the contents of this document under review and will issue updated versions of it as and when necessary.

# Context

## The relationship between misconduct and sanctions

7. While acts which fall short of misconduct can be dealt with informally by leadership judges, a finding of misconduct **must** be accompanied by a recommendation for a sanction. Although not defined in the rules and regulations, misconduct can be described as:

**A breach of the standards of conduct expected of judicial office holders that is serious enough to require a disciplinary sanction.**

8. The sanctions for misconduct, the first three of which are set out in section 108 of the Constitutional Reform Act 2005, are, in ascending order of severity:
  - Formal advice
  - Formal warning
  - Reprimand
  - Removal
9. The Lady Chief Justice issues sanctions below removal with the agreement of the Lord Chancellor. Except for High Court judges and above, who can only be removed by the Monarch following an Address by Parliament, the power to remove an office holder for misconduct rests with the Lord Chancellor and requires the Lady Chief Justice's agreement. The powers for the Lord Chancellor to remove an office-holder from office are set out in several different pieces of legislation.

## Suspension

10. The Lady Chief Justice can, with the Lord Chancellor's agreement, suspend an office holder during a disciplinary investigation or an investigation for an offence if they decide that this would be appropriate while the investigation is ongoing. This is referred to as 'interim suspension.' It is not a sanction and implies no presumption of wrongdoing on the office holder's part.

11. The Lady Chief Justice can also, with the Lord Chancellor's agreement, suspend an office holder in certain other circumstances. Section 108(4) of the Constitutional Reform Act 2005 provides that:

'He may suspend a person from a judicial office for any period during which any of the following applies—

- a. the person is subject to criminal proceedings;
- b. the person is serving a sentence imposed in criminal proceedings;
- c. the person has been convicted of an offence and is subject to prescribed procedures in relation to the conduct constituting the offence.

He may suspend a person from a judicial office for any period if—

- a. the person has been convicted of a criminal offence,
- b. it has been determined under prescribed procedures that the person should not be removed from office, and
- c. 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.'

## **Disciplinary statements**

12. To aid transparency about disciplinary decisions, the Lord Chancellor and the Lady Chief Justice will usually publish a statement when they have issued a disciplinary sanction. The JCIO drafts the statements, which are reviewed by Ministry of Justice and Judicial Office press teams, for them to approve. Published statements can be viewed on the JCIO's website.

[Disciplinary Statements - Customer Self-Service \(judicialconduct.gov.uk\)](https://www.judicialconduct.gov.uk)

13. Since August 2022, the publication periods for disciplinary statements are:

Formal advice	Two Years
Formal warning	Four Years
Reprimand	Six Years
Removal from office (except for failure to meet minimum sitting requirements)	Indefinite
Removal from office for failure to meet minimum sitting requirements	Five years

14. The fact finder's report will not be published. The JCIO will only send the fact finder's report to the Lord Chancellor and Lady Chief Justice to inform their decision and to a limited number of other individuals, as specified in the rules.



# How to use this guidance

15. The following guidance aims to help fact finders work through the process of deciding whether the facts of a case amount to misconduct and, if so, which sanction to recommend to the Lord Chancellor and the Lady Chief Justice. **Annex B** contains information about different types of misconduct.

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## STAGE 1

Decide whether the facts amount to misconduct

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Consider guidance to judiciary to identify relevant conduct standards  
Decide if there has been a clear breach of the standards, which is serious enough to require a sanction

**(Pages 10-12 & Annex A)**

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## STAGE 2

Decide the level of seriousness

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Consider the nature of the misconduct and integrity factors / harm to decide the level of misconduct

**(Pages 13-15 & Annex A)**

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## STAGE 3

Select the indicative sanction

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Select the most appropriate sanction for the misconduct before any aggravating and mitigating factors are applied

**(Page 16 & Annex A)**

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## STAGE 4

Apply aggravating and mitigating factors and finalise the recommendation for a sanction

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Consider any aggravating and mitigating factors and decide whether they justify recommending a more or less serious sanction (*Do not double-count factors considered at stage 2*)

**(Pages 17-18 & Annex A)**

# Decision-making process

## Stage 1: Decide whether the facts amount to misconduct

16. The first stage in the process (after determining the facts of a case) is to decide whether the facts amount to misconduct.

### What is misconduct?

17. Fact finders should bear in mind that while in some professional regulatory schemes misconduct is a term applied only to the most serious breaches of standards, in a judicial disciplinary context it applies to a wide range of types and seriousness of conduct.

18. As stated earlier in this document, while there is no formal definition of misconduct, it can be described as:

**A breach of the standards of conduct expected of judicial office holders that is serious enough to require a disciplinary sanction.**

19. In most cases it should be straightforward, having regard to the guidance in this document, to decide whether an office holder's actions amount to misconduct. When it is still not clearcut, it might help to consider the following question:

**Bearing in mind the high standards of behaviour expected of judicial office holders, what would a reasonable, ordinary member of the public think if the conduct did not result in a disciplinary sanction?**

20. There will be cases in which fact finders decide that misconduct has not occurred. In such cases, they should refer to the JCIO's guidance about their specific role in the disciplinary process for information about the next steps.

### Standards of conduct

21. A recommended starting point when deciding whether misconduct has taken place is to consider:

- The standards of conduct relevant to the case

- Whether there has been a breach of those standards

22. In many cases, the key reference document will be the *Guide to Judicial Conduct* (“the Guide”). The Guide, issued on behalf of the Lady Chief Justice and the Senior President of Tribunals, applies to salaried and fee paid courts and tribunal judicial office holders, non-legal tribunal members, magistrates, and coroners. It is based on the three key principles which underpin judicial conduct:

- Judicial independence
- Impartiality
- Integrity

23. The Guide is not a code of conduct. It aims to provide office holders with a set of principles to guide their own decisions on how to conduct themselves. However, decisions of successive Lord Chancellors and Lord Chief Justices have established that a breach of the guidance it contains is liable to result in a finding of misconduct.

24. There will be cases in which documents that supplement the Guide are also relevant, for example:

- Social media guidance for the judiciary
- Guidance on reporting minor offences
- The declaration and undertaking (signed by magistrates on appointment)

25. It is suggested that fact finders start with the Guide and then move on to consider any relevant supplementary guidance.

**The Lord Chancellor and the Lady Chief Justice do not consider ignorance of expected conduct standards to be a reasonable excuse for breaching them.**

### **Precedent decisions**

26. **Annex A** contains information about common types of cases which have resulted in findings of misconduct, pointers to relevant guidance, and suggestions for considering the level of misconduct and indicative sanctions.

27. While it is unlikely that fact finders will encounter a case involving an entirely new type of misconduct, they should not hesitate to contact the JCIO (or the relevant

advisory committee secretary in cases involving magistrates) if they need advice in such circumstances.

### **Extenuating circumstances**

28. While such cases are likely to be rare, it is open to fact finders (except in cases of serious or gross misconduct – see paragraph 37) to decide that an act which, absent extenuating circumstances, would usually amount to misconduct is not misconduct and can, therefore, be dealt with by way of informal advice. In such cases, the fact finder's report should give a clear and comprehensive explanation of why the extenuating circumstances are such that a finding of misconduct is not warranted. The question posed earlier in this document should be considered in this context:

**Bearing in mind the high standards of behaviour expected of judicial office holders, what would a reasonable, ordinary member of the public think if the conduct did not result in a disciplinary sanction?**

## Stage 2: Decide the level of seriousness

29. Having decided that an office holder has acted in a way which warrants a finding of misconduct, the next stage is to decide the level of seriousness from the list below:

- Misconduct
- Serious misconduct
- Gross misconduct

30. The key factors in assessing seriousness will normally be:

- The nature of the misconduct
- Integrity factors
- Harm (or the risk of harm)

### Nature of the misconduct

31. When assessing seriousness, fact finders should bear in mind that, due to the nature of judicial office, conduct expectations are high and certain types of conduct, such as dishonesty, are liable to be regarded as even more serious than they would be in many other professions.

### Integrity factors

32. In assessing factors which go to integrity (one of the three principles guiding judicial conduct<sup>1</sup>), relevant questions, the importance of which will vary from case to case may include:

- Was the misconduct deliberate or reckless?
- What was the office holder's motivation?
- Did it involve preplanning?
- Should the office holder have known that their actions were wrong or likely to be wrong?
- To what extent, if any, was the misconduct influenced by factors outside the office holder's control, for example the actions of others?
- Did the misconduct involve an abuse of position/authority?

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<sup>1</sup> Judicial independence, Impartiality, Integrity: [Guide to Judicial Conduct \(judiciary.uk\)](http://judiciary.uk)

- Was there any attempt to conceal, blame others, or otherwise avoid taking responsibility?

## Harm

33. Harm can take different forms, one or more of which might apply to any given case:

- Physical harm (e.g. physical injury or illness or damage to property)
- Emotional harm (e.g. distress, embarrassment, anxiety, or fear)
- Mental harm (e.g. a diagnosed mental disorder which is attributed to, or worsened by, misconduct)
- Financial harm (e.g. loss of income or expenses caused by misconduct)
- Operational harm (e.g. delay to the completion of a case or staff/judicial time spent dealing with the consequences of misconduct)
- Reputational harm to the office holder or the judiciary (e.g. negative press following misconduct)

34. In assessing harm, fact finders should consider:

- The extent of any actual harm caused
- The risk of harm, where no harm occurred
- The number of people adversely affected or potentially affected, and the extent to which they were affected
- If anyone else was affected by the misconduct, whether they were particularly susceptible to harm (for example a junior member of staff or a vulnerable person)
- The duration or potential duration of the harm

35. The lists above are not intended to be exhaustive.

36. Fact finders should refer to the framework below for guidance. It is not intended to be prescriptive and not all the factors will be present or carry equal weight in every case. For example, an act could amount to serious or gross misconduct due to the harm caused even if it was the result of a genuine mistake.

Level of seriousness	Typical relevant factors
Misconduct	<ul style="list-style-type: none"> <li>• Breach of expected standards of conduct</li> <li>• Nature of the misconduct is relatively minor</li> <li>• Integrity factors are minimal, e.g. a genuine error of judgement</li> <li>• Harm/risk of harm is minimal, e.g. low risk of reputational damage / harm to others</li> </ul>
Serious misconduct	<ul style="list-style-type: none"> <li>• Breach of expected standards of conduct</li> <li>• Nature of the misconduct is serious</li> <li>• Integrity factors are significant, e.g. a reckless act or knowing breach of expected standards</li> <li>• Harm/risk of harm is significant, e.g. the act has resulted in emotional distress or risked significant reputational damage</li> </ul>
Gross misconduct	<ul style="list-style-type: none"> <li>• Breach of expected standards of conduct</li> <li>• Nature of the misconduct is of utmost seriousness</li> <li>• Integrity factors are high, e.g. a knowing, calculated or highly negligent act which contravenes one or more of the principles underpinning judicial conduct</li> <li>• Harm/risk of harm is substantial, e.g. the act has caused significant harm to one or more others or risked significant reputational damage and/or would undermine public trust in the individual if he/she were to remain in office</li> </ul>

### Stage 3: Select the indicative sanction

37. Once the level of misconduct has been determined, the indicative sanction should be selected. This will not necessarily be the sanction recommended to the Lord Chancellor and the Lady Chief Justice as consideration of any aggravating and mitigating factors in stage 4 could result in a different recommendation.

38. It is not permissible to recommend more than one sanction in each case. The recommended sanction in cases which involve more than one act of misconduct should reflect the totality of the misconduct.

39. Fact finders should refer to the framework below when selecting an indicative sanction:

Level of seriousness	Indicative sanction (see also notes below)
Misconduct	Formal advice or formal warning
Serious misconduct	Reprimand
Gross misconduct	Removal

40. **Formal advice** is issued when the Lord Chancellor and the Lady Chief Justice are satisfied that conduct, while not serious, was sufficiently improper to amount to misconduct, thereby warranting a formal response, recorded in writing, and kept on record.

41. As with formal warnings and reprimands, a record of the sanction is retained by the JCIO and may be considered in the event of any future findings of misconduct.

42. Depending on the circumstances, formal advice may be considered appropriate in cases where the office holder's conduct was the result of a genuine misunderstanding or error of judgement on their part.

43. A **formal warning** will usually be issued where the office holder has acted so inappropriately that they need to be put formally on notice that further misconduct is liable to result in a more severe sanction. A formal warning will typically be issued where the office holder should have known their conduct would be unacceptable and there is a risk of damage to their standing / the reputation of the judiciary.



44. A **reprimand** is likely to be appropriate where there is evidence of serious misconduct, but where the threshold for removal from office has not been met. Such cases could include repeated instances of inappropriate conduct or a single particularly serious act. Cases which entail a risk of significant damage to the reputation of the judiciary are also liable to fall into this category. Once an office holder has a reprimand on file, any future findings of misconduct carry a significant possibility of removal.
45. **Removal** from office will typically be used in cases of gross misconduct and obviously has serious consequences, especially for fee paid and salaried judiciary. Recommending this sanction should be reserved for misconduct so severe that it renders the officer holder's position untenable, such as cases in which the office holder has been subject to a conviction or formal findings of dishonesty. A general rule of thumb is that removal is liable to be appropriate in cases of misconduct so serious that the office holder's continuation in office would undermine the reputation and standing of the wider judiciary in the eyes of the public.
46. The Lord Chancellor and the Lady Chief Justice may also remove an office holder if they no longer fulfil the requirements of their role; for example, for failure without good reason to comply with sitting requirements. However, such cases are usually dealt with under the *summary process*, which provides a mechanism for removal from office without further investigation.

## Stage 4: Apply aggravating and mitigating factors, finalise the recommended sanction

47. The final stage involves applying aggravating and mitigating factors to decide whether the indicative sanction should be adjusted.
48. The sanction recommended should be the sanction that is appropriate to the misconduct. The appropriate sanction will vary according to the nature of the misconduct, the circumstances which led to it and any mitigating or aggravating factors. For example, the appropriate sanction for misconduct involving an office holder with no previous findings of misconduct, and/or who accepts full responsibility for their actions is likely to be lighter than for an office holder who has previously been sanctioned for the same or similar type of misconduct and/or who refuses to accept responsibility.
49. Aggravating and mitigating factors, which may be put forward in the office holder's written representations or in oral evidence, relate to the personal circumstances of the office holder or the wider circumstances of the misconduct, as opposed to the seriousness of the misconduct itself, which is assessed at stage 2. It is important to avoid double-counting. In other words, factors which have been considered in deciding the seriousness of the misconduct at stage, should not be taken into consideration as aggravating or mitigating factors at this stage.
50. The factors listed in the table below are not exhaustive. They are not in any particular order or intended to imply a hierarchy. They may overlap with the integrity factors and harm (see paragraphs 33-35).

Aggravating factors	Mitigating factors
Office-holder is experienced	Prompt self-reporting
Office-holder is in a leadership role	Genuine remorse
Misconduct motivated by, or demonstrating, hostility based on a protected characteristic	Acceptance of responsibility / apology
Failure to engage with, or deliberate attempts to frustrate, the disciplinary process	Voluntary steps taken to rectify or mitigate the effect of the misconduct
Previous finding of misconduct	Personal circumstances or health issues, which may have influenced the behaviour e.g. physical or mental health issues
	No previous finding of misconduct

51. Having considered the aggravating and mitigating factors, fact finders have the discretion to recommend a sanction outside the indicative range on **page 16**.

52. Whether aggravating and mitigating factors warrant uprating or downrating the recommended sanction in each case will be a matter of judgement. However, as a general guideline, mitigation should be compelling to warrant recommending a sanction below reprimand in a case of serious misconduct and exceptional to warrant a sanction below removal in a case of gross misconduct.

## Written reasons

53. Clear written reasons for finding that the facts of a case amount to misconduct and for the recommended sanction are crucial for:

- Enabling the Lord Chancellor and the Lady Chief Justice to make an informed decision, and enabling the JCIO to advise them about their decision
- Enabling the office holder and, if there is one, the complainant to understand the decision and the rationale for it
- Enabling the public/judiciary to understand the decision\*

\*Whilst the fact finder's report itself will not be published, the JCIO's advice and the publishable disciplinary statement will be drafted with regard to the report.

54. Fact finders should use their judgement to determine the right level of detail in each case: a higher level of detail would normally be expected in cases involving misconduct found to be a higher level of seriousness. As a general guideline, written reasons should provide the reader with answers to the following questions:

- Which standards of conduct were breached?
- How were they breached?
- Why did the breach amount to misconduct?
- Which level of seriousness was the misconduct and why?
- What is the final recommendation for a sanction and, if applicable, what aggravating and mitigating factors were considered in reaching it?

55. See the appendices of the specific guidance for your fact finder role for a template to use for your report.

# Annex A: Types of misconduct

The guidance in this annex is based on the JCIO's experience and knowledge of common types of misconduct and the decisions of successive Lord Chancellors and Lord Chief Justices. It contains:

- Descriptions of different types of misconduct
- Pointers to relevant guidance for office holders about conduct (*fact finders should still review the relevant guidance documents themselves and satisfy themselves that they have identified the relevant standards*)
- Suggestions to aid decisions about the seriousness of misconduct in different types of cases and indicative sanctions
- Suggestions to aid consideration of aggravating or mitigating factors (*to be read alongside pages 17-18*).

The guidance does not refer to cases arising from serious criminal convictions. This is because such cases, which are rare in any event, will usually be dealt with via the summary process under part 4 of the *Judicial Conduct Rules 2023*.

While this guidance cannot hope to be all encompassing, it should be useful to fact finders in most cases.

## **Aggression, rudeness, bullying, harassing**

### **Relevant guidance**

The *Guide to Judicial Conduct* reminds office holders that:

*'A judge's conduct in court should uphold the status of judicial office, the commitment made in the judicial oath and the confidence of litigants in particular and the public in general. The judge should seek to be courteous, patient, tolerant and punctual and should respect the dignity of all.'*

The *Declaration and Undertaking* signed by magistrates on appointment reminds magistrates to:

*'Be circumspect in my conduct and maintain the dignity, standing and good reputation of the magistracy at all times in my private, working and public life.'*

### **Notes**

This category encompasses a wide range of behaviours, circumstances, and levels of seriousness. It could take place during a hearing, elsewhere on official premises, or in other locations. It could involve conduct towards anyone, for example judicial colleagues, staff, litigants, and advocates.

Examples have included:

- Loss of temper resulting variously in shouting, snapping, swearing, physical displays of anger such as throwing down papers
- Belittling, demeaning, sarcasm, or otherwise offensive language
- Sexualised behaviours such as suggestive comments or staring
- Retaliating to offensive language with offensive language
- Excessive interruptions\* / argumentative / personal criticism during hearings

\*Interrupting somebody during a hearing will only raise a question of misconduct if the extent of interruption and/or the manner in which it is done goes beyond reasonable exercise of the freedom that office holders have in deciding how to manage hearings.

Most cases in this category have involved isolated incidents. However, some have involved a series of incidents, either close together or over time. Such cases may encompass complaints of bullying or harassment.

### **Suggested seriousness and indicative sanctions**

The table below, which is not prescriptive, suggests a starting point for considering the appropriate level of seriousness and indicative sanction.

Nature of conduct	Level of misconduct	Indicative sanction
Single instance, e.g. brief loss of temper	Misconduct	Formal advice
Single instance involving conduct related to a protected characteristic, but at the lower end of the scale of seriousness, e.g. an ill-judged remark which was not made with malice	Misconduct	Formal warning
More than one instance but none which were serious in nature or involved conduct related to a protected characteristic	Misconduct	Formal warning
More than one instance, one or more of which were serious in nature and/or involved conduct related to a protected characteristic	Serious misconduct	Reprimand
One or more instances of a very serious nature, e.g. use of racially abusive language	Gross misconduct	Removal

Fact finders should keep in mind that because a recipient of improper conduct did not complain about it at the time, this is unlikely to be material mitigation. Experience has shown that staff and advocates in particular may be very reluctant to complain about an office holder. (While the time limit for making a complaint is three-months from the matter complained of the disciplinary rules enable this time limit to be extended for exceptional reasons. Fact finders may therefore encounter cases involving allegations which date back more than three months.)

## Biased conduct

### Relevant guidance

The *Guide to Judicial Conduct* reminds office holders that:

*‘A judge’s conduct in court should uphold the status of judicial office, the commitment made in the judicial oath and the confidence of litigants in particular and the public in general. The judge should seek to be courteous, patient, tolerant and punctual and should respect the dignity of all.’*

And that:

*He or she should ensure that no one in court is exposed to any display of bias or prejudice from any source.*

And that:

*“All judges should be aware that, by long standing convention, they should not comment publicly on:*

- *the merits, meaning, or likely effect of government policy or proposals, including proposed legislation;*
- *the merits of public appointments; or,*
- *the merits of individual cases.”*

The *Declaration and Undertaking* signed by magistrates on appointment reminds magistrates to:

*‘Be circumspect in my conduct and maintain the dignity, standing and good reputation of the magistracy at all times in my private, working and public life.’*

*‘Endeavour to ensure that my actions as a magistrate are free from any political, racial, sexual or other bias.’*

### Notes

The JCIO does not accept complaints about biased decision-making. However, conduct indicative of personal bias or prejudice can result in a finding of misconduct. Such conduct may occur in or outside court, including on social media or through comments made to the press.



Examples have included:

- Comments which suggest sympathy for a cause, for example in cases involving environmental protests
- Comments which suggest a negative view of people from a certain group or background
- Derogatory or mocking comments about litigants or witnesses
- Publicly expressing views about government policy, the police, or the veracity of another office holder's decision
- Inappropriate communication with one of the parties or advocates in a case

**Suggested seriousness**

Misconduct

**Suggested indicative sanction**

Formal advice (most cases) or formal warning

## Delayed judgments

### Relevant guidance

The *Guide to Judicial Conduct* reminds office holders of the need for:

*‘Diligence and care in the discharge of judicial duties’*

### Notes

The threshold for when a delayed judgment is liable to raise a question of misconduct is that the delay exceeds **three months** and is without a *reasonable excuse*.

However, some courts/tribunals have their own target timescales, which may be different. Other factors may include the number of delayed judgments, and the length of the delay(s).

While pressure of work or difficult personal circumstances can be mitigating factors, the Lord Chancellor and Lady Chief Justice are unlikely to regard them as a *reasonable excuse* for failure to deliver a judgment on time.

### Suggested seriousness

Misconduct

### Suggested indicative sanction

Formal advice

## Road traffic offences

### Relevant guidance

The *Guide to Judicial Conduct* reminds office holders to display:

*'Respect for the law and observance of the law.'*

And that:

*"Judges should avoid situations which: might reasonably reduce respect for judicial office or might cast doubt upon their judicial impartiality; or which might expose them to charges of hypocrisy by reason of their private life."*

The *Declaration and Undertaking* signed by magistrates on appointment reminds magistrates to:

*'Be circumspect in my conduct and maintain the dignity, standing and good reputation of the magistracy at all times in my private, working and public life.'*

The requirement to report road traffic offences is contained in *Reporting Minor Offences*. It is triggered if they result in:

- Any period of disqualification from holding or obtaining a driving licence
- Six penalty points are ordered to be endorsed on the licence, or,
- If fewer than six points are ordered to be endorsed, the total points endorsed on the licence exceeds six

### Notes

Precedent decisions have established that offences which trigger the requirement to report will normally result in a finding of misconduct.

Examples have included:

- Several speeding offences taking the total points over six
- Single instances of particularly excessive speeding resulting in six or more points and a significant fine
- Driving while using a mobile phone

**Suggested seriousness**

Misconduct

**Suggested indicative sanction**

Formal advice (most cases) to formal warning, e.g. for driving substantially over the speed limit.

## Misuse of judicial status / abuse of position

### Relevant guidance

The *Guide to Judicial Conduct* reminds office holders to:

*'Avoid situations which: might reasonably reduce respect for judicial office or might cast doubt upon their judicial impartiality; or which might expose them to charges of hypocrisy by reason of their private life.'*

And reminds magistrates that:

*'The initials JP may be used on private and business letterheads etc in the same way as academic or professional qualifications. But they should not be used for the furtherance of trade, professional, business, or political interests.'*

The *Declaration and Undertaking* signed by magistrates on appointment reminds magistrates to:

*'Be circumspect in my conduct and maintain the dignity, standing and good reputation of the magistracy at all times in my private, working and public life.'*

### Notes

Misconduct in this category can take place in a variety of circumstances and usually involves referring improperly to judicial status in written or verbal communications. Most cases are at the lower end of the scale of seriousness. Occasionally, a case will involve a more serious abuse of position.

Examples of less serious cases have included:

- Referring to judicial status when the office holder is seeking a particular outcome or decision from a business or public body
- Referring to judicial status in a dispute with another person or body
- Referring to judicial status in a non-judicial capacity in a way that risked being seen as trying to add weight to an office holder's opinions
- Referring to judicial status in the course of a dispute with somebody else
- (In the case of magistrates) referring to judicial status on election materials in a way which went beyond a permissible statement of fact

A finding of misconduct does not require the fact finder to be satisfied that the office holder deliberately misused their status. Even if conduct unintentionally created a risk that a reasonable person could perceive it as attempting use judicial status to gain influence or an advantage, this will usually be enough.

Examples of more serious cases have included:

- Trying to interfere directly in how a court dealt with a case involving a relative
- Unauthorised access to digital systems to view information about a case for personal reasons

**Suggested seriousness**

Misconduct (most cases) to gross misconduct (exceptional)

**Suggested indicative sanction**

Formal advice (most cases) to removal (exceptional)

## Misuse of social media

### Relevant guidance

The *Guide to Judicial Conduct* reminds office holders to:

*'Avoid situations which: might reasonably reduce respect for judicial office or might cast doubt upon their judicial impartiality; or which might expose them to charges of hypocrisy by reason of their private life.'*

*Social media guidance for the judiciary* reminds office holders

*'Judicial office holders who use social media should keep in mind the core principles of the Guide to Judicial Conduct: judicial independence, impartiality, and integrity.'*

*Social media should not be used by individual members of the judiciary to communicate publicly about their judicial work, or matters related to the judiciary, unless this has been discussed and agreed with their leadership judge or the JO and complies with any conditions set by the leadership judge.'*

*Judicial office holders may hold and use personal social media accounts, but should*

- *Be alert to the risk that this may compromise their safety or that of their family and colleagues*
- *Be aware of the risk of undermining trust and confidence in the judiciary by expressing, or appearing to endorse, views which could cast doubt on their objectivity*
- *Take care to avoid or limit such risk*
- *Be alert not to disclose confidential/sensitive information*
- *Bear in mind that in a serious case inappropriate use of social media can be referred to the Judicial Conduct Investigations Office*

### Notes

Most cases involving misuse of social media have been at the lower end of the scale of seriousness. However, there have been a few examples of more serious cases. The nature of the content is typically the determining factor.

Examples at the lower end of the scale of seriousness have included:

- Posting content or remarks which could risk undermining public confidence in the office holder's impartiality

- Appearing to endorse content which could have the same effect, e.g. by “liking,” subscribing, or retweeting
- Engaging in arguments or disputes over social media
- Being involved, even passively, in an online discussion during which individuals made offensive remarks about a person with whom the office holder had a personal relationship
- Committing an accidental low level data breach in which the details of a small number of colleagues were posted online

Examples at the more serious end of the scale have included:

- Posting offensive remarks about members of the public who were discussing court cases on an internet forum
- Posting racist material on a social networking site

While the fact that an office holder did not refer to their judicial status may be regarded as mitigation, the Lord Chancellor and Lady Chief Justice would be unlikely to consider it an acceptable excuse for misuse of social media.

In some cases, office holders have said in response to a complaint that they believed they had restricted access to their social media activity to a specific group of friends. The Lord Chancellor and Lady Chief Justice would be unlikely to regard this as an excuse, or compelling mitigation, for misuse of social media.

### **Suggested seriousness**

Misconduct (most cases) to gross misconduct (exceptional)

### **Suggested indicative sanction**

Formal advice (most cases) to removal from office (exceptional)



## Adverse findings by a court, an employer, or regulatory body

### Relevant guidance

The *Guide to Judicial Conduct* reminds office holders to display:

*'Respect for the law and observance of the law'*

And that:

*"Judges should avoid situations which: might reasonably reduce respect for judicial office or might cast doubt upon their judicial impartiality; or which might expose them to charges of hypocrisy by reason of their private life."*

The *Declaration and Undertaking* signed by magistrates on appointment reminds magistrates to:

*'Be circumspect in my conduct and maintain the dignity, standing and good reputation of the magistracy at all times in my private, working and public life.'*

### Notes

It does not automatically follow that being subject to adverse findings by a court, an employer, or another regulatory body such as the Solicitors Regulation Authority will result in a finding of misconduct. However, such cases do occur from time to time.

Office holders should have informed their judicial leaders if they are involved in legal or professional disciplinary proceedings (**see also pages 35-36**).

Any decision as to whether a judicial disciplinary investigation is required will normally be made once the outcome of the court/professional disciplinary proceedings is known. The determining factor will usually be whether any findings which have been made show that the office holder breached the standards of conduct expected of office holders.

Examples of cases in this category have included:

- A solicitor/fee paid office holder who was found to have mismanaged clients' money and failed to follow proper accounting procedures
- Findings of dishonesty against an architect/magistrate

- Adverse findings, including of dishonesty, against an office holder in civil proceedings which raised questions of integrity

**Suggested seriousness**

Misconduct (most cases) to gross misconduct (exceptional)

**Suggested indicative sanction**

Formal advice (most cases) to removal from office (exceptional)

## Failure to comply with reporting obligations

### Relevant guidance

The *Guide to Judicial Conduct* reminds office holders that they have:

*'An obligation to notify the appropriate senior judicial officer if they are aware of any matters relating to conduct which may affect their position or may reflect on the standing and reputation of the judiciary at large.'*

(Refer to the Guide and, for cases involving magistrates, the *Declaration and Undertaking* for more detailed guidance).

### Notes

In most cases where it is a feature, failure to comply with reporting requirements will be considered as an aggravating factor. However, it can be regarded as misconduct in and of itself.

Examples have included failure to report being:

- Subject to professional disciplinary proceedings
- A party in civil proceedings
- A witness in criminal proceedings
- Arrested and/or interviewed by the police
- Associated with another person who has been arrested or charged with an offence

As well as failure to report a relevant matter, failure to do so promptly and/or accurately can also be regarded as misconduct.

The main factor in determining seriousness is likely to be the seriousness of the issue which has not been reported. While a failure to report or report promptly involvement in civil proceedings with no exceptional features would normally be at the lower end of the scale of seriousness, failure to report being investigated by the police or deliberately providing misleading information would be at the higher end.

In cases involving late and/or inaccurate reporting other considerations are likely to include the length of any delay in reporting and/or the extent to which the office holder failed to provide full and accurate information.

The reasons for failure to comply with reporting obligations will also be relevant to seriousness. Most cases arise from ignorance or misunderstanding of reporting requirements. While this is not considered a reasonable excuse, it would be regarded as less serious than deliberate failure to comply.

**Suggested seriousness**

Misconduct (most cases) to gross misconduct (exceptional)

**Suggested indicative sanction**

Formal advice (most cases) to removal (exceptional)

## **Falling asleep in court**

### **Relevant guidance**

The *Guide to Judicial Conduct* reminds office holders of the need for:

*'Diligence and care in the discharge of judicial duties'*

### **Notes**

While in many professions falling asleep on the job would be unlikely to warrant formal disciplinary action, if an office holder falls asleep in court, even if only briefly, it is likely to result in a finding of misconduct. This is because of the important and highly scrutinised nature of judicial work and because everyone who comes before a court or tribunal has a right to expect that the office holder will give their full attention to the case.

### **Suggested seriousness**

Misconduct

### **Suggested indicative sanction**

Formal advice

## Failure to meet minimum sitting requirements or do essential training

### Relevant requirements

The minimum sitting requirements for salaried and fee paid office holders are set out in terms and conditions of appointment. For magistrates, they are set out in the Lord Chancellor's Directions to Advisory Committees and in the declaration and undertaking which all magistrates sign on appointment.

### Notes

One of the grounds for recommending removal from office under the *summary process* is that an office holder: *"has failed to comply without reasonable excuse with any sitting requirement specified by the Lord Chancellor."*

This will typically involve a persistent failure over time rather than isolated incidents. It is quite common for additional factors to include failure to attend essential training, and failure to engage with efforts by a judicial leader to address the problem informally.

Most cases have involved magistrates and, occasionally, tribunal members. As most cases are dealt with under the summary process, it is uncommon for them to be dealt with under the full investigation process. Such cases do arise, however, for example when the facts of the case are not clearcut or where the office holder has put offered substantial mitigation.

### Suggested seriousness

Serious misconduct to gross misconduct\*

### Suggested Indicative sanction

Reprimand to removal

\*While failure to meet minimum sitting requirements does not entail the same sorts of integrity and harm considerations as other behaviours which could warrant a finding of gross misconduct, it is considered to be incompatible with holding judicial office. This is because it involves a failure to meet one of the fundamental requirements of an office holder's role.