

The Judicial Conduct (Magistrates) Rules 2023

Coming into force - -

13th October 2023

CONTENTS

Part 1

General

1. Citation and commencement
2. Definitions
- 3-4. Application of Rules
- 5-6. Designation by a secretary
7. Administrative assistance
- 8-12. Making a complaint about misconduct
- 13-15. Time limits within which a complaint must be made
- 16-19. Extension of time limits
20. Measurement of time for doing an act
21. Establishing facts

Part 2

Consideration by the secretary

22. Scope
- 23-38. Consideration by the secretary
- 39-40. Procedure to be followed before a referral is made to a nominated committee member

Part 3

Expedited process

41. Scope
42. Expedited process
- 43-47. Procedure for expedited process
- 48-49. Report of the JCIO
50. Reporting procedure
- 51-52. Referral following report

Part 4

Summary process

53. Scope
54. Summary process
- 55-58. Procedure for summary process

- 59-60. Report of the secretary
- 61-64. Reporting procedure

Part 5
Nominated committee member

- 65. Scope
- 66. Nomination of a nominated committee member
- 67-73. Consideration by nominated committee member
- 74. Right to be accompanied to interview with nominated committee member
- 75-81. Dismissal, referral and recommendations by nominated committee member
- 82-83. Report of nominated committee member
- 84-95. Reporting procedure of nominated committee member and referral to a disciplinary panel

Part 6
Judicial investigation

- 96. Scope
- 97. Nomination of an investigating judge
- 98-109. Investigation by investigating judge
- 110. Right to be accompanied when oral evidence is being given to investigating judge
- 111. Report of investigating judge
- 112-119. Reporting procedure of investigating judge

Part 7
Disciplinary panel

- 120. Scope
- 121. Disciplinary panel
- 122-123. Functions of a disciplinary panel
- 124-131. Procedure of disciplinary panel
- 132. Right to be accompanied when oral evidence is being given to disciplinary panel
- 133. Report of disciplinary panel
- 134-141. Reporting procedure of disciplinary panel

Part 8
Miscellaneous

- 142-146. Reopening a case that has been dismissed
- 147. Consideration of matters in absence of a complaint
- 148-150. Withdrawal of a complaint
- 151-152. Deferring consideration of a complaint
- 153-154. Ceasing consideration of a case

The Lord Chief Justice of England and Wales, in exercise of powers conferred by sections 115 and 117 of the Constitutional Reform Act 2005 and by regulation 7 of the Judicial Discipline (Prescribed Procedures) Regulations 2023 and with the agreement of the Lord Chancellor, makes the following Rules:

PART 1

General

Citation and commencement

1. These Rules may be cited as the Judicial Conduct (Magistrates) Rules 2023 and shall come into force on 13 October 2023.

Definitions

2. In these Rules—

“the Act” means the Constitutional Reform Act 2005;

“bank holiday” means a bank holiday under the Banking and Financial Dealings Act 1971;

“case” means a complaint or issue of misconduct being considered under these Rules;

“complaint” means a complaint containing an allegation of misconduct by a person holding an office;

“conduct advisory committee” means one of the Lord Chancellor’s conduct advisory committees on justices of the peace;

“deputy secretary” means a deputy secretary of a conduct advisory committee;

“disciplinary panel” has the meaning given by regulation 11 of the Regulations;

“disciplinary sanction” means any of the following actions taken in relation to misconduct—

- (a) the exercise by the Lord Chancellor of the Lord Chancellor’s power to remove a magistrate from office under section 11 of the Courts Act 2003; or
- (b) the exercise by the Lord Chief Justice of the Lord Chief Justice’s powers under section 108(3), (4)(b) and (c) and (5) of the Act;

“FTAAAC” means a Family Training, Approvals, Authorisations and Appraisals Committee;

“investigating judge” has the meaning given by regulation 10 of the Regulations;

“JCIO” means the Judicial Conduct Investigations Office;

“JTAAAC” means a Justices’ Training, Approvals, Authorisations and Appraisals Committee;

“licensing body” means any body that licenses or regulates any profession;

“magistrate” means a justice of the peace who is not a District Judge (Magistrates’ Courts);

“magistrate concerned” means the magistrate whose conduct is being considered in accordance with these Rules;

“nominated committee member” has the meaning given by regulation 9 of the Regulations;

“office” means an office listed in regulation 3(2) of the Regulations;

“recruitment advisory committee” means one of the Lord Chancellor’s recruitment advisory committees on justices of the peace;

“Regulations” means the Judicial Discipline (Prescribed Procedures) Regulations 2023;

“secretary” means the secretary of the conduct advisory committee for the local justice area to which the magistrate is assigned under section 10(2) of the Courts Act 2003;

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday in the United Kingdom.

Application of Rules

3. These Rules apply to any complaint made on or after the date on which these Rules come into force.

4. These Rules apply to magistrates (including those on the supplemental list).

Designation by a secretary

5. The secretary may designate one or more deputy secretaries to act on their behalf in relation to—

- (a) a specific complaint;
- (b) all complaints; or
- (c) a category of complaints;

and in such circumstances, references in these Rules to the secretary include the deputy secretary or deputy secretaries who have been designated.

6. The secretary may ask the secretary of another conduct advisory committee to deal with a specific complaint when there is a good reason to do so. In such circumstances, references in these Rules to the secretary are to the secretary of the conduct advisory committee to which a complaint has been transferred.

Administrative assistance

7. The secretary may provide administrative assistance to a nominated committee member in relation to the exercise of their functions under these Rules.

Making a complaint about misconduct

8. A complaint must be made to the secretary.

9. A complaint must be made in writing unless the secretary agrees to accept a complaint in another form.

10. A complaint must—

- (a) state the name of the person making the complaint;
- (b) state the address or email address of the person making the complaint;
- (c) contain an allegation of misconduct on the part of an identified or identifiable magistrate, which is supported by relevant details as specified in guidance published by the JCIO from time to time;
- (d) state the date, or dates, the alleged misconduct took place unless the secretary decides that this is unnecessary taking into account all the circumstances of the complaint.

11. A complaint must be accompanied by copies of all the documents within the control of the complainant to which they intend to refer.

12. The secretary must not accept a complaint in any case where one or both of the following applies—

- (a) the complaint does not meet the requirements set out in rules 8 to 11;
- (b) the complainant states that they do not want the magistrate concerned to see a copy of the complaint or of any document accompanying it.

Time limits within which a complaint must be made

13. A complaint must be made within three months of the matter complained of.

14. Subject to rule 16 (extension of time limits), the secretary must not accept a complaint if the complaint is made outside the time limit in rule 13.

15. Where the circumstances in rule 14 apply the complainant must be notified—

- (a) that their complaint has not been accepted because it is out of time; and
- (b) that they may make representations within ten working days of the notification for an extension of the time limit.

Extension of time limits

16. The secretary may only extend the time limit in rule 13 for making a complaint if they consider that there are exceptional circumstances.

17. The fact that a complaint contains an allegation of misconduct will not, by itself, be sufficient reason for the secretary to accept a complaint outside the time limit in rule 13.

18. The secretary may extend any other time limit under these Rules, whether or not the time limit has expired, where they consider that there is good reason to do so.

19. Where the secretary has extended a time limit, they must inform the complainant and, if they are aware of the complaint, the magistrate concerned.

Measurement of time for doing an act

20. In these Rules the time for doing any act in response to a notification, invitation or request (“the document”) starts on the day that corresponds to the method of delivery used in relation to the document shown in the table below—

Method of delivery	Starting day
First class post (or other method which provides for delivery on the next working day).	The second working day after the day on which the document was posted.
Second class post.	The third working day after the day on which the document was posted.
Delivering the document to or leaving it at a permitted address.	If it is delivered to or left at the permitted address on a working day before 4.30pm, that day; or if delivered at, or after, 4.30pm, the next working day.

Method of delivery	Starting day
Email or other electronic transmission.	If an email or other electronic transmission is sent on a working day before 4.30pm, that day; or if an email or other electronic transmission is sent at, or after, 4.30pm, the next working day.

Establishing facts

21. Any question as to whether a fact is established under these Rules, including during a review of findings of fact by a disciplinary panel, must be decided on the balance of probabilities.

PART 2

Consideration by the secretary

Scope

22. This Part applies where—

- (a) a complaint is made to a secretary;
- (b) the Ombudsman refers a case to a secretary to investigate under section 111(7)(b) of the Act;
- (c) a nominated committee member refers a case to a secretary under rule 145(b)(i);
- (d) a complaint is re-opened under rule 146; or
- (e) a case is investigated under rule 147.

Consideration by the secretary

23. A complaint must initially be considered by the secretary.

24. The secretary must dismiss a complaint, or part of a complaint, if it falls into one or more of the following categories—

- (a) the alleged facts are obviously untrue;
- (b) even if the alleged facts were true, they would not require a disciplinary sanction to be issued;
- (c) it is about a judicial decision or judicial case management, and raises no question of misconduct;
- (d) it is vexatious;
- (e) it is misconceived;
- (f) it raises a matter which has already been dealt with, whether under these Rules or otherwise, and does not present any significant new evidence;
- (g) it is about the private life or the professional conduct in a non-judicial capacity of a magistrate and raises no question of misconduct;
- (h) for any other reason it does not relate to misconduct by a magistrate.

25. If it appears, following initial consideration, that none of the criteria for dismissal of a complaint in rule 24 apply the secretary must make such inquiries as they consider reasonable and proportionate to establish the facts of the case.

26. As part of any inquiries made under rule 25 the secretary may invite the magistrate concerned to comment on the complaint, or part of the complaint.

27. If the secretary decides to invite the magistrate concerned to comment on the complaint, or part of the complaint, under rule 26, they will—

- (a) provide the magistrate concerned with—
 - (i) the complaint;
 - (ii) any supporting documents (see rule 11); and
 - (iii) any other information that they have obtained when considering the complaint;
- (b) invite the magistrate concerned to comment on the complaint, or part of the complaint; and
- (c) consider any comments received from the magistrate concerned.

28. The magistrate concerned must provide any comments within 15 working days of an invitation under rule 27.

29. If the magistrate concerned provides comments on the complaint, or part of the complaint, under rule 28, the secretary may invite the complainant to respond to any comments containing information which is relevant to the complaint if—

- (a) the comments contain information of which the complainant may be unaware; or
- (b) it may assist the secretary with their consideration of the complaint to obtain comments from the complainant.

30. If the secretary decides to invite the complainant to respond under rule 29, they will—

- (a) provide the complainant with—
 - (i) any comments made by the magistrate concerned; and
 - (ii) any other information that the secretary considers to be relevant;
- (b) invite the complainant to respond to the comments from the magistrate concerned; and
- (c) consider any response received from the complainant.

31. The complainant must provide any comments within ten working days of an invitation under rule 30.

32. Where an account of facts given by a complainant differs from an account given by the magistrate concerned, the secretary must consider any source of independent evidence which exists and which may help to verify the facts before they dismiss a complaint, unless to do so would be disproportionate in all the circumstances.

33. Where the secretary dismisses a complaint, or part of a complaint, under rule 24 they must inform the complainant and, if they are aware of the complaint, the magistrate concerned, of the dismissal and the reasons for it.

34. Where the secretary dismisses a complaint, or part of a complaint, under rule 24, they must always consider whether to refer the matter to either or both—

- (a) the Bench Chair to deal with as a pastoral matter;
- (b) the JTAAAC or FTAAC to deal with as a training matter.

35. When considering whether a complaint raises pastoral or training issues, the secretary may seek advice from the Judicial College.

36. Where the magistrate concerned has been informed of the complaint by the secretary, the secretary must notify the Bench Chair that a complaint has been made about the magistrate concerned and provide the Bench Chair with brief details of the complaint.

37. Any correspondence with the Bench Chair, the JTAAAC or the FTAAAC must be copied to the magistrate concerned.

38. Where the secretary does not dismiss a complaint under rule 24, they must—

- (a) deal with the complaint under the expedited process (Part 3);
- (b) deal with the complaint under the summary process (Part 4); or
- (c) refer the complaint to a nominated committee member to consider (Part 5).

Procedure to be followed before a referral is made to a nominated committee member

39. The secretary may not refer a complaint to a nominated committee member unless they have taken the steps set out in rule 27(a) to (c).

40. The secretary can continue to refer the complaint to a nominated committee member only if—

- (a) the magistrate concerned has provided comments within the time provided and, having considered these, the secretary does not consider that the complaint should be dismissed under rule 24; or
- (b) the time has elapsed for providing comments and the magistrate concerned has not responded.

PART 3

Expedited process

Scope

41. This Part applies where—

- (a) the secretary has—
 - (i) considered a complaint in accordance with rules 23 to 32; and
 - (ii) notified the JCIO under rule 43 that they consider the grounds in rule 42 may apply; and
- (b) the JCIO concludes that the grounds in rule 42 apply.

Expedited process

42. The JCIO may advise the Lord Chancellor and the Lord Chief Justice that the magistrate concerned should be issued with formal advice or a formal warning where—

- (a) there is no dispute as to the facts set out in the complaint;
- (b) the alleged facts relate to conduct which the JCIO considers that the Lord Chancellor and the Lord Chief Justice would be very likely to decide amounted to misconduct; and
- (c) the JCIO considers that the Lord Chancellor and the Lord Chief Justice would be very likely to decide that formal advice or a formal warning was the appropriate disciplinary sanction.

Procedure for expedited process

43. Where the secretary has considered a complaint in accordance with rules 23 to 32 and considers that the grounds in rule 42 may apply, they must notify the JCIO and send to it—

- (a) the complaint;
- (b) any supporting documents (see rule 11); and
- (c) any other information that they have obtained when considering the complaint.

44. Where the JCIO receives a notification from the secretary under rule 43, it must consider whether the grounds in rule 42 apply and notify the secretary of its conclusion.

45. Where the JCIO notifies the secretary that it considers that the grounds in rule 42 apply, the secretary must inform the magistrate concerned and request that they state whether they agree to the use of the procedure set out in rule 42. The magistrate concerned must respond within ten working days of the request.

46. The procedure set out in rule 42 will apply if the magistrate concerned states within ten working days that they want the procedure to be used.

47. The procedure set out in rule 42 will not apply if—

- (a) the magistrate concerned replies within ten working days and states that they do not want the procedure to be used; or
- (b) no reply is received by the secretary from the magistrate concerned within ten working days.

Report of the JCIO

48. The JCIO must prepare a report if it intends to advise the Lord Chancellor and the Lord Chief Justice under rule 42.

49. The report must—

- (a) state that the grounds in rule 42 apply;
- (b) state that the magistrate concerned has stated within ten working days that they want the procedure in rule 42 to be used; and
- (c) include any comments on the complaint provided by the magistrate concerned.

Reporting procedure

50. The JCIO must send the report to—

- (a) the Lord Chancellor and the Lord Chief Justice;
- (b) the magistrate concerned; and
- (c) the secretary.

Referral following report

51. If the Lord Chancellor and the Lord Chief Justice consider that a reprimand, suspension or removal from office may be the appropriate disciplinary sanction they must refer the complaint to the JCIO, which must refer the complaint to the secretary.

52. If a matter is referred to the secretary under rule 51, they must refer the complaint to a nominated committee member under rule 38(c).

PART 4

Summary process

Scope

53. This Part applies where the secretary—

- (a) has considered a complaint in accordance with rule 23; and
- (b) concludes that one or more of the grounds in rule 54 applies.

Summary process

54. The secretary may advise the Lord Chancellor and the Lord Chief Justice that the magistrate concerned should be removed from office without further investigation where the magistrate concerned—

- (a) has been convicted in the United Kingdom of a criminal offence and has been sentenced to imprisonment, including a suspended sentence, as defined in section 286(6) of the Sentencing Act 2020;
- (b) has been convicted elsewhere of any criminal offence which, if committed in any part of the United Kingdom would constitute a criminal offence, and has been sentenced to imprisonment, including a suspended sentence;
- (c) has been committed to prison for contempt of court (including a suspended committal order);
- (d) has been convicted in the United Kingdom of an offence involving dishonesty, deception, theft or perverting the course of justice;
- (e) has been convicted in the United Kingdom of a sexual offence or of a violent offence;
- (f) has been cautioned in relation to an offence falling within paragraphs (d) or (e) of this rule;
- (g) is an undischarged bankrupt or a person whose estate has had a sequestration awarded in respect of it and who has not been discharged;
- (h) is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order of like effect made in Scotland or Northern Ireland;
- (i) has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it;
- (j) is subject to—
 - (i) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986;
 - (ii) a disqualification order or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002; or
 - (iii) an order made under section 429(2) of the Insolvency Act 1986 (disabilities on revocation of administration order against an individual);
- (k) has failed to disclose information concerning their suitability to hold office to—
 - (i) a recruitment advisory committee; or
 - (ii) the person who made the appointment or who made the recommendation for the appointment;which the magistrate concerned knew about before their appointment to their office;

- (l) has at any time been subject to any investigation or proceedings concerning their fitness to practise by any licensing body, the final outcome of which was—
 - (i) the suspension of the magistrate concerned from a register held by the licensing body, and that suspension has not been terminated;
 - (ii) the erasure of the name of the magistrate concerned from a register held by the licensing body;
 - (iii) a decision that had the effect of preventing the magistrate concerned from practising the profession licensed or regulated by the licensing body; or
 - (iv) a decision that had the effect of only allowing the magistrate concerned to practise that profession subject to conditions, and those conditions have not been lifted;
- (m) has been removed from another office in accordance with prescribed procedures;
- (n) has failed without reasonable excuse to comply with any sitting requirement specified in the terms of appointment to the office concerned;
- (o) has failed without reasonable excuse to complete, within a reasonable time, one or more training requirements designated as essential by rule 21(2)(c) or rule 25(2)(c) of the Justices of the Peace Rules 2016; or
- (p) is subject to any form of restriction or restraint in bringing proceedings before a court or a tribunal in any part of the United Kingdom.

Procedure for summary process

55. Before advice may be given under rule 54, the secretary must give the magistrate concerned an opportunity to make representations as to—

- (a) whether the magistrate concerned accepts one or more of the grounds in rule 54 applies; and
- (b) if so, why they should not be removed from office.

56. The magistrate concerned must provide the representations referred to in rule 55 within 15 working days of the request for them.

57. The secretary can provide advice under rule 54 only if—

- (a) the magistrate concerned has provided representations within the time allowed and, having considered these, the secretary considers that one or more of the grounds in rule 54 applies; or
- (b) the time allowed for providing representations has elapsed and the magistrate concerned has not provided any representations.

58. If, having considered any representations provided under rule 56, the secretary considers that none of the grounds in rule 54 apply, they must consider the complaint again and decide whether to take the action set out in rule 24, rule 25 or rule 38(a) or (c).

Report of the secretary

59. The secretary must prepare a report if they intend to advise the Lord Chancellor and the Lord Chief Justice under rule 54.

60. The report must—

- (a) state which ground or grounds in rule 54 applies; and
- (b) include any representations provided by the magistrate concerned under rule 56.

Reporting procedure

- 61.** The secretary must send the report and any accompanying documents to the JCIO.
- 62.** On receipt of the report and any accompanying documents from the secretary the JCIO must examine the report and documents to ensure that—
- (a) all the information necessary for the Lord Chancellor and the Lord Chief Justice to make a decision has been obtained; and
 - (b) the procedure set out in these Rules and in the Regulations has been followed.
- 63.** Where it appears to the JCIO that the provisions set out in rule 62(a) and (b) have not been satisfied, it may remit the case to the secretary with advice as to further action.
- 64.** Where the JCIO is satisfied that the provisions set out in rule 62(a) and(b) are satisfied, it must send the report to—
- (a) the Lord Chancellor and the Lord Chief Justice; and
 - (b) the magistrate concerned.

PART 5

Nominated committee member

Scope

- 65.** This Part applies where—
- (a) the secretary refers a complaint to a nominated committee member under rule 38(c);
 - (b) the Lord Chancellor and the Lord Chief Justice refer a complaint to a nominated committee member under regulation 13 of the Regulations;
 - (c) the Ombudsman refers a case to a nominated committee member under section 111(7)(b) of the Act; or
 - (d) a nominated committee member refers a complaint to another nominated committee member under rule 145(b)(ii).

Nomination of a nominated committee member

66. A nominated committee member must be nominated by the Lord Chief Justice in accordance with regulation 9 of the Regulations.

Consideration by nominated committee member

- 67.** The nominated committee member must consider a complaint and determine—
- (a) the facts of the case; and
 - (b) whether the facts amount to misconduct and, if so, what disciplinary sanction should be issued.
- 68.** In exercising their functions under these Rules, the nominated committee member must consult the secretary as the nominated committee member considers appropriate.
- 69.** For the purposes of considering a complaint the nominated committee member may—
- (a) make such inquiries into the complaint as they consider appropriate;
 - (b) request any documents which appear to be relevant; and

(c) interview any person they consider appropriate.

70. Where the nominated committee member considers that the magistrate concerned has failed, without good reason, either to agree an interview date or to attend an interview which has been arranged, the nominated committee member may consider the complaint without having interviewed the magistrate concerned.

71. The secretary may attend any interview carried out by the nominated committee member under rule 69(c), unless the secretary considers that it is unnecessary to do so.

72. The nominated committee member must ensure that a record is made of any interview they carry out under rule 69(c).

73. Before taking any of the actions set out in rule 75, the nominated committee member must send to the magistrate concerned—

- (a) any documents received under rule 69; and
- (b) any record of any interviews made under rule 72.

Right to be accompanied to interview with nominated committee member

74. Where the magistrate concerned is invited to attend an interview with the nominated committee member, the magistrate concerned may be accompanied to the interview by one individual who—

- (a) holds an office; and
- (b) has not had any involvement in the circumstances giving rise to the complaint or the investigation, other than having accompanied the magistrate concerned when they have—
 - (i) been interviewed by a nominated committee member; or
 - (ii) given oral evidence to an investigating judge or a disciplinary panel.

Dismissal, referral and recommendations by nominated committee member

75. The nominated committee member may—

- (a) dismiss a complaint;
- (b) recommend that a disciplinary sanction should be issued; or
- (c) refer a complaint to an investigating judge in accordance with rule 80.

76. A nominated committee member may only dismiss a complaint under rule 75(a) where they consider that there has been no misconduct.

77. If a nominated committee member dismisses a complaint under rule 75(a) they may deal with it informally by referring it to either or both—

- (a) the Bench Chair to deal with as a pastoral matter;
- (b) the JTAAAC or FTAAAC to deal with as a training matter.

78. Where the nominated committee member dismisses a complaint under rule 75(a), they must inform the secretary of the dismissal and the reasons for it and, if applicable, that the complaint has been referred to be dealt with informally under rule 77.

79. Where the secretary receives information from the nominated committee member under rule 78, they must inform the complainant of the dismissal and the reasons for it and, if applicable, that the complaint has been referred to be dealt with informally.

80. The nominated committee member may refer a complaint, or part of a complaint, to an investigating judge to investigate in accordance with Part 6 where they consider that a complaint is sufficiently serious or complex, or that a detailed investigation is required to establish the facts of a complaint.

81. Where a complaint is referred to an investigating judge, the secretary must inform the magistrate concerned and the complainant accordingly.

Report of nominated committee member

82. The nominated committee member must prepare a report if they—

- (a) dismiss a complaint; or
- (b) recommend that a disciplinary sanction should be issued.

83. The report must state—

- (a) what findings of fact the nominated committee member has made;
- (b) whether there has been any misconduct and if so—
 - (i) the nature of the misconduct; and
 - (ii) what disciplinary sanction the nominated committee member considers should be issued and why.

Reporting procedure of nominated committee member and referral to a disciplinary panel

84. The nominated committee member must send their report and any accompanying documents to the JCIO.

85. On receipt of the report and any accompanying documents from the nominated committee member the JCIO must examine the report and documents to ensure that—

- (a) all the information that would be necessary for either the Lord Chancellor and the Lord Chief Justice to make a decision or a disciplinary panel to consider the case has been obtained; and
- (b) the procedure set out in these Rules and in the Regulations has been followed.

86. Where it appears to the JCIO that the provisions set out in rule 85(a) and (b) have not been satisfied, it may remit the case to the nominated committee member with advice as to further action.

87. Where the JCIO is satisfied that the provisions set out in rule 85(a) and (b) are satisfied, it must notify the secretary who must send the report to the magistrate concerned.

88. Where the report recommends removal or suspension from office, when sending the report to the magistrate concerned the secretary must invite the magistrate concerned to—

- (a) comment on the report; and
- (b) state if they want a disciplinary panel to consider the complaint.

89. The magistrate concerned must provide any comments or response to the secretary within 15 working days of an invitation under rule 88.

90. The nominated committee member may disclose their report to any other person and invite them to comment on it.

91. Disclosure of the report under rule 90 —

- (a) may be of the whole or part;

- (b) may be in the form of a summary; and
- (c) must ensure that any disclosure is in accordance with section 139 of the Act (confidentiality).

92. Any comments on the report must be provided to the secretary within ten working days of an invitation under rule 90.

93. If the magistrate concerned states under rule 89 that they want a disciplinary panel to consider the complaint, the secretary must—

- (a) inform the JCIO of that statement; and
- (b) send a copy of the report to the JCIO together with a copy of—
 - (i) the complaint;
 - (ii) any comments received from the magistrate concerned under rule 89 or any other person under rule 92;
 - (iii) any evidence which has been provided to the nominated committee member.

94. If the secretary informs the JCIO of a statement under rule 93(a), the JCIO must—

- (a) refer the complaint to a disciplinary panel to consider in accordance with Part 7 of these Rules; and
- (b) send the items received from the secretary under rule 93(b) to the disciplinary panel.

95. Where a report has been prepared under rule 82(b) and rule 94 does not apply, the JCIO must send the report and any comments received under rule 89 or rule 92 to the Lord Chancellor and the Lord Chief Justice.

PART 6

Judicial investigation

Scope

96. This Part applies where a referral is made to an investigating judge by—

- (a) a nominated committee member under rule 80 or rule 145(b)(iii);
- (b) the Lord Chancellor and the Lord Chief Justice under regulation 13 of the Regulations;
or
- (c) the Ombudsman under section 111(7)(b) of the Act.

Nomination of an investigating judge

97. An investigating judge must be nominated by the Lord Chief Justice in accordance with regulation 10 of the Regulations.

Investigation by investigating judge

98. The investigating judge must consider a complaint and determine—

- (a) the facts of the case; and
- (b) whether the facts amount to misconduct; and, if so, what disciplinary sanction should be issued.

99. The investigating judge must—

- (a) decide how to conduct the investigation; and

(b) notify the JCIO of their plans for the conduct of the investigation.

100. The JCIO must notify the magistrate concerned and the complainant of the investigating judge's plans for the conduct of the investigation.

101. The investigating judge may invite the complainant or any person who may be able to assist the investigation to give evidence about the case.

102. Any evidence or representations from the complainant or any other person must be provided to the investigating judge within ten working days of an invitation under rule 101.

103. The investigating judge may take oral evidence if it is considered necessary to do so.

104. Where the investigating judge considers that the magistrate concerned has failed, without good reason, either to agree a date to give oral evidence or to attend to give oral evidence on a date which has been arranged, the investigating judge may consider the complaint without having taken oral evidence from the magistrate concerned.

105. The investigating judge must ensure that a record is made of any oral evidence taken under rule 103.

106. The investigating judge must disclose any evidence provided under rule 102 and any record of oral evidence made under rule 105 to the magistrate concerned and must invite them to make representations on the evidence.

107. The magistrate concerned must make any representations within ten working days of an invitation under rule 106.

108. The investigating judge may recommend to the Lord Chancellor and the Lord Chief Justice that—

- (a) a complaint should be dismissed; or
- (b) a disciplinary sanction should be issued.

109. An investigating judge may only recommend that a complaint is dismissed under rule 108(a) where they consider that there has been no misconduct.

Right to be accompanied when oral evidence is being given to investigating judge

110. Where the magistrate concerned is invited to give evidence to the investigating judge, the magistrate concerned may be accompanied to the interview by one individual who—

- (a) holds an office; and
- (b) has not had any involvement in the circumstances giving rise to the complaint or the investigation, other than having accompanied the magistrate concerned when they have—
 - (i) been interviewed by a nominated committee member; or
 - (ii) given oral evidence to an investigating judge or a disciplinary panel.

Report of investigating judge

111. The investigating judge must prepare a report that sets out—

- (a) the facts of the case;
- (b) whether there has been any misconduct and if so—
 - (i) the nature of the misconduct; and
 - (ii) what disciplinary sanction the investigating judge considers should be issued and why.

Reporting procedure of investigating judge

112. The investigating judge must send their report to the JCIO.

113. The JCIO must send the report to the magistrate concerned.

114. Where the report recommends removal or suspension from office, when sending the report to the magistrate concerned the JCIO must invite the magistrate concerned to comment on the report.

115. The magistrate concerned must provide any comments or response to the JCIO within 15 working days of an invitation under rule 114.

116. The investigating judge may disclose their report to any other person and invite them to comment on it.

117. Disclosure of the report under rule 116—

- (a) may be of the whole or part,
- (b) may be in the form of a summary, and
- (c) must ensure that any disclosure is in accordance with section 139 of the Act (confidentiality).

118. Any comments on the report must be provided to the JCIO within ten working days of an invitation under rule 116.

119. The JCIO must send the report and any comments received under rule 115 or rule 118 to the Lord Chancellor and the Lord Chief Justice and to the magistrate concerned.

PART 7

Disciplinary panel

Scope

120. This Part applies where—

- (a) the magistrate concerned has stated under rule 89 that they want a disciplinary panel to consider the complaint;
- (b) the Lord Chancellor and the Lord Chief Justice have referred a complaint to a disciplinary panel under regulation 13 or 14 of the Regulations; or
- (c) the Ombudsman refers a case to a disciplinary panel to investigate under section 111(7)(b) of the Act.

Disciplinary panel

121. The disciplinary panel must be convened by the JCIO in accordance with regulation 11 of the Regulations.

Functions of a disciplinary panel

122. A disciplinary panel may consider and review—

- (a) any findings of fact;
- (b) any recommendation as to the conduct of the magistrate concerned; and
- (c) any proposed disciplinary sanction.

123. Where a nominated committee member has recommended that the magistrate concerned should be removed or suspended from office, the disciplinary panel must advise the Lord Chancellor and the Lord Chief Justice whether removal or suspension is justified.

Procedure of disciplinary panel

124. The disciplinary panel may—

- (a) make such inquiries as it considers are appropriate to fulfil its functions;
- (b) request any documents which appear to be relevant.

125. The JCIO must invite the magistrate concerned to state whether they want to give oral evidence to the disciplinary panel.

126. The magistrate concerned must respond within ten working days of an invitation under rule 125.

127. A disciplinary panel must take oral evidence from the magistrate concerned unless—

- (a) the magistrate concerned has responded under rule 126 and stated that they do not want to give oral evidence;
- (b) the magistrate concerned has not responded within ten working days as required by rule 126; or
- (c) the magistrate concerned has indicated that they want to give oral evidence under rule 126 but the disciplinary panel considers that they have failed, without good reason, to cooperate with reasonable attempts to arrange for oral evidence to be given.

128. A disciplinary panel may take evidence, including oral evidence, from any other person.

129. A disciplinary panel must ensure that a record is made of any oral evidence taken under rule 127 or rule 128.

130. The disciplinary panel may recommend to the Lord Chancellor and the Lord Chief Justice that—

- (a) a complaint should be dismissed; or
- (b) a disciplinary sanction should be issued.

131. A disciplinary panel may only recommend that a complaint is dismissed under rule 130(a) where they consider that there has been no misconduct.

Right to be accompanied when oral evidence is being given to disciplinary panel

132. Where the magistrate concerned is to give oral evidence to the disciplinary panel, the magistrate concerned may be accompanied by one individual who—

- (a) holds an office; and
- (b) has not had any involvement in the circumstances giving rise to the complaint or the investigation, other than having accompanied the magistrate concerned when they have—
 - (i) been interviewed by a nominated committee member; or
 - (ii) given oral evidence to an investigating judge or a disciplinary panel.

Report of disciplinary panel

133. The disciplinary panel must prepare a report that sets out—

- (a) the facts of the case;

- (b) whether there has been any misconduct and if so—
 - (i) the nature of the misconduct; and
 - (ii) what disciplinary sanction the disciplinary panel considers should be issued and why.

Reporting procedure of disciplinary panel

- 134.** The disciplinary panel must send its report to the JCIO.
- 135.** The JCIO must send the report to the magistrate concerned.
- 136.** Where the report recommends removal or suspension from office, when sending the report to the magistrate concerned the JCIO must invite the magistrate concerned to comment on the report.
- 137.** The magistrate concerned must provide any comments to the JCIO within 15 working days of an invitation under rule 136.
- 138.** The disciplinary panel may disclose its report to any other person and invite them to comment on it.
- 139.** Disclosure of the report under rule 138—
 - (a) may be of the whole or part;
 - (b) may be in the form of a summary; and
 - (c) must ensure that any disclosure is in accordance with section 139 of the Act (confidentiality).
- 140.** Any comments on the report must be provided to the JCIO within ten working days of an invitation under rule 136.
- 141.** The JCIO must send the report and any comments received under rule 137 or rule 140 to the Lord Chancellor and the Lord Chief Justice and to the magistrate concerned.

PART 8

Miscellaneous

Re-opening a complaint that has been dismissed

- 142.** Exceptionally, a nominated committee member may re-open a complaint that has been dismissed where they receive relevant new information concerning a complaint.
- 143.** If a complainant, or other person or body, provides information to the secretary after a complaint has been dismissed, the secretary must refer such information to a nominated committee member if the secretary is satisfied that it is relevant new information within the meaning of rule 144.
- 144.** For these purposes, relevant new information means information which—
 - (a) relates to misconduct;
 - (b) is cogent and credible;
 - (c) has not already been considered under these Rules; and
 - (d) is sufficiently serious to justify re-opening a complaint.
- 145.** If a nominated committee member decides to re-open a complaint, they may—

- (a) consider the complaint in accordance with Part 5; or
- (b) refer the complaint to—
 - (i) a secretary to consider in accordance with Part 2;
 - (ii) another nominated committee member to consider in accordance with Part 5; or
 - (iii) an investigating judge to consider in accordance with Part 6.

146. Exceptionally, a secretary may re-open a complaint after they have dismissed it under rule 25 if they consider that there is good reason to do so. If a complaint is re-opened under this rule it must be dealt with in accordance with Part 2.

Consideration of matters in absence of a complaint

147. Where a secretary receives information from any source which raises a question of misconduct by a magistrate they must investigate the case in accordance with Part 2 of these Rules as though it were a complaint of misconduct, with the exception that any obligation to be discharged in relation to a complainant does not apply.

Withdrawal of a complaint

148. A complainant may withdraw their complaint at any time.

149. Where a complaint is withdrawn, it may continue to be investigated where it is being considered by—

- (a) the secretary under Part 2 of these Rules if the secretary considers it appropriate to continue to investigate the complaint;
- (b) a nominated committee member under Part 5 of these Rules if the nominated committee member considers it appropriate to continue to investigate the complaint;
- (c) an investigating judge under Part 6 of these Rules if the investigating judge considers it appropriate to continue to investigate the complaint; or
- (d) a disciplinary panel under Part 7 of these Rules if the disciplinary panel considers it appropriate to continue to investigate the complaint.

150. Where rule 149 applies, the case is to continue to be considered under these Rules as if the complaint had not been withdrawn and the complainant must be informed of this decision by the secretary, the nominated committee member, the investigating judge or the disciplinary panel as the case may be.

Deferring consideration of a complaint

151. Consideration of a case may be deferred where the secretary considers that there is good reason to do so.

152. Where consideration of a case is deferred under rule 151, the secretary must inform the complainant and, if they are aware of the complaint, the magistrate concerned of the deferral and the reasons for it.

Ceasing consideration of a case

153. Consideration of a case may be ceased where the secretary considers that there is no reasonable prospect of the matter being completed before the magistrate concerned leaves office.

154. Where consideration of a case ceases under rule 153, the secretary must inform the complainant and, if they are aware of the complaint, the magistrate concerned of this and the reasons for it.

Date

Lord Chief Justice

I agree

Date

Lord Chancellor