

# The Judicial Conduct Rules 2023

*Coming into force - -*

*13th October 2023*

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The Lord Chief Justice of England and Wales, in exercise of powers conferred by sections 115 and 117 of the Constitutional Reform Act 2005, by paragraph 14 of Schedule 3 to the Coroners and Justice Act 2009, and by regulation 7 of the Judicial Discipline (Prescribed Procedures) Regulations 2023 and with the agreement of the Lord Chancellor, the Lord President of the Court of Session and the Lady Chief Justice of Northern Ireland, makes the following Rules:

## PART 1

### General

#### **Citation and commencement**

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

#### **Definitions**

2.—(1) In these Rules—

“the Act” means the Constitutional Reform Act 2005;

“area coroner” means a person appointed as such under paragraph 2 of Schedule 3 to the Coroners and Justice Act 2009;

“assistant coroner” means a person appointed as such under paragraph 2 of Schedule 3 to the Coroners and Justice Act 2009;

“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;

“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 any of the Lord Chancellor’s powers to remove a person from office;
- (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; or
- (c) a decision to move an Address for the removal of a senior judge by both Houses of Parliament;

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

“JCIO” means the Judicial Conduct Investigations Office;

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

“nominated judge” has the meaning given by regulation 8 of the Regulations;

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

“office holder concerned” means an office holder whose conduct is being considered in accordance with these Rules;

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

“senior coroner” means a person appointed as such under paragraph 1 of Schedule 3 to the Coroners and Justice Act 2009;

“senior judge” has the meaning given in section 109(5) of the Act;

“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.

(2) In these Rules, unless the contrary intention appears, a reference to the Lord Chief Justice is to be read—

- (a) in relation to an office holder who exercises functions wholly or mainly in Scotland, as a reference to the Lord President of the Court of Session;
- (b) in relation to an office holder who exercises functions wholly or mainly in Northern Ireland, as a reference to the Lord Chief Justice of Northern Ireland;
- (c) otherwise, as a reference to the Lord Chief Justice of England and Wales.

### **Application of Rules**

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

**4.** Subject to rule 5, these Rules apply to—

- (a) a judicial office;
- (b) the offices of senior coroner, area coroner or assistant coroner; and
- (c) an office which has been designated under section 118 of the Act.

**5.** These Rules do not apply to a justice of the peace who is not a District Judge (Magistrates’ Courts).

### **Making a complaint about misconduct**

**6.** A complaint must be made to the JCIO.

**7.** A complaint must be made on the online complaints portal of the JCIO unless the JCIO agrees to accept a complaint in another form.

**8.** 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 person holding an office, which is supported by relevant details as specified in guidance published by the JCIO from time to time;
- (d) state the date, or dates, that the alleged misconduct took place unless the JCIO decides that this is unnecessary taking into account all the circumstances of the complaint.

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

**10.** The JCIO 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 6 to 9;
- (b) the complainant states that they do not want the office holder concerned to see a copy of the complaint or of any document accompanying it.

11. A complaint is made on the date that it is submitted to the JCIO in accordance with rules 6 to 9.

**Time limits within which a complaint must be made**

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

13. Subject to rule 15 (extension of time limits), the JCIO must not accept a complaint if the complaint is made outside the time limit in rule 12.

14. Where the circumstances in rule 13 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**

15. The JCIO may only extend the time limit in rule 12 for making a complaint if it considers that there are exceptional circumstances.

16. The fact that a complaint contains an allegation of misconduct will not, by itself, be sufficient reason for the JCIO to accept a complaint outside the time limit in rule 12.

17. The JCIO may extend any other time limit under these Rules, whether or not the time limit has expired, where it considers that there is good reason to do so.

18. Where the JCIO has extended a time limit, it must inform the complainant and, if they are aware of the complaint, the office holder concerned.

**Measurement of time for doing an act**

19. 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.
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**

20. 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 JCIO**

#### **Scope**

21. This Part applies where—

- (a) a complaint is made to the JCIO;
- (b) the Ombudsman refers a case to the JCIO to investigate under section 111(7)(b) of the Act;
- (c) a nominated judge refers a case to the JCIO under rule 130(b)(i) or rule 132; or
- (d) a complaint is re-opened under rule 131.

#### **Consideration by the JCIO**

22. A complaint must initially be considered by the JCIO.

23. The JCIO 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 person holding an office and raises no question of misconduct;
- (h) for any other reason it does not relate to misconduct by a person holding an office.

24. If it appears, following initial consideration, that none of the criteria for dismissal of a complaint in rule 23 apply the JCIO must make such inquiries as it considers reasonable and proportionate to establish the facts of the case.

25. As part of any inquiries made under rule 24 the JCIO may invite the office holder concerned to comment on the complaint, or part of the complaint.

26. If the JCIO decides to invite the office holder concerned to comment on the complaint, or part of the complaint, under rule 25, it will—

- (a) provide the office holder concerned with—
  - (i) the complaint;
  - (ii) any supporting documents (see rule 9); and
  - (iii) any other information that it has obtained when considering the complaint;

- (b) invite the office holder concerned to comment on the complaint, or part of the complaint; and
- (c) consider any comments received from the office holder concerned.

27. The office holder concerned must provide any comments within 15 working days of an invitation under rule 26.

28. If the office holder concerned provides comments on the complaint, or part of the complaint, under rule 27, the JCIO 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 JCIO with their consideration of the complaint to obtain comments from the complainant.

29. If the JCIO decides to invite the complainant to respond under rule 28, it will—

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

30. The complainant must provide any comments within ten working days of an invitation under rule 29.

31. Where an account of facts given by a complainant differs from an account given by the office holder concerned, the JCIO must consider any source of independent evidence which exists and which may help to verify the facts before it dismisses a complaint, unless to do so would be disproportionate in all the circumstances.

32. Where the JCIO dismisses a complaint, or part of a complaint, under rule 23 it must inform the complainant and, if they are aware of the complaint, the office holder concerned, of the dismissal and the reasons for it.

33. Where the JCIO does not dismiss a complaint under rule 23, it 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 judge to consider (Part 5).

#### **Procedure to be followed before a referral is made to a nominated judge**

34. The JCIO may not refer a complaint to a nominated judge unless it has taken the steps set out in rule 26(a) to (c).

35. The JCIO can continue to refer the complaint to a nominated judge only if—

- (a) the office holder concerned has provided comments within the time provided and, having considered these, the JCIO does not consider that the complaint should be dismissed under rule 23; or
- (b) the time has elapsed for providing comments and the office holder concerned has not responded.

## PART 3

### Expedited process

#### Scope

36. This Part applies where the JCIO—
- (a) has considered a complaint in accordance with rules 22 to 31; and
  - (b) concludes that the grounds in rule 37 apply.

#### Expedited process

37. The JCIO may advise the Lord Chancellor and the Lord Chief Justice that the office holder 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

38. Where this Part applies, the JCIO must inform the office holder and request that they state whether they agree to the use of the procedure set out in rule 37. The office holder concerned must respond within ten working days of the request.

39. The procedure set out in rule 37 will apply if the office holder concerned states within ten working days that they want the procedure to be used.

40. The procedure set out in rule 37 will not apply if—
- (a) the office holder 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 JCIO from the office holder concerned within ten working days.

#### Report of the JCIO

41. The JCIO must prepare a report if it intends to advise the Lord Chancellor and the Lord Chief Justice under rule 37.

42. The report must—
- (a) state that the grounds in rule 37 apply;
  - (b) state that the office holder concerned has stated within ten working days that they want the procedure in rule 37 to be used; and
  - (c) include any comments provided by the office holder concerned on the complaint.

#### Reporting procedure

43. The JCIO must send the report to—



- (a) the Lord Chancellor and the Lord Chief Justice; and
- (b) the office holder concerned.

### **Referral following report**

44. 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.

45. If a matter is referred to the JCIO under rule 44 it must refer the complaint to a nominated judge under rule 33(c).

## **PART 4**

### **Summary process**

#### **Scope**

46. This Part applies where the JCIO—

- (a) has considered a complaint in accordance with rule 22; and
- (b) concludes that one or more of the grounds in rule 47 applies.

#### **Summary process**

47. The JCIO may advise the Lord Chancellor and the Lord Chief Justice that the office holder concerned should be removed from office without further investigation where the office holder 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) the Judicial Appointments Commission; or
  - (ii) the person who made the appointment or who made the recommendation for the appointment;
 which the office holder 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 office holder concerned from a register held by the licensing body, and that suspension has not been terminated;
  - (ii) the erasure of the name of the office holder concerned from a register held by the licensing body;
  - (iii) a decision that had the effect of preventing the office holder concerned from practising the profession licensed or regulated by the licensing body; or
  - (iv) a decision that had the effect of only allowing the office holder 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; or
- (o) 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**

**48.** Before advice may be given under rule 47, the JCIO must give the office holder concerned an opportunity to make representations as to—

- (a) whether the office holder accepts that one or more of the grounds in rule 47 applies; and
- (b) if so, why they should not be removed from office.

**49.** The office holder concerned must provide the representations referred to in rule 48 within 15 working days of the request for them.

**50.** The JCIO can provide advice under rule 47 only if—

- (a) the office holder concerned has provided representations within the time allowed and, having considered these, the JCIO considers that one or more of the grounds in rule 47 applies; or
- (b) the time allowed for providing representations has elapsed and the office holder concerned has not provided any representations.

**51.** If, having considered any representations provided under rule 49, the JCIO considers that none of the grounds in rule 47 apply, it must consider the complaint again and decide whether to take the action set out in rule 23, rule 24 or rule 33 (a) or (c).

### **Report of the JCIO**

**52.** The JCIO must prepare a report if it intends to advise the Lord Chancellor and the Lord Chief Justice under rule 47.

**53.** The report must—

- (a) state which ground or grounds in rule 47 applies; and
- (b) include any representations provided by the office holder concerned under rule 49.

### **Reporting procedure**

**54.** The JCIO must send the report to—

- (a) the Lord Chancellor and the Lord Chief Justice; and
- (b) the office holder concerned.

## **PART 5**

### **Nominated judge**

#### **Scope**

**55.** This Part applies where—

- (a) the JCIO refers a complaint to a nominated judge under rule 33(c);
- (b) the Lord Chancellor and the Lord Chief Justice refer a complaint to a nominated judge under regulation 13 of the Regulations;
- (c) the Ombudsman refers a case to a nominated judge under section 111(7)(b) of the Act; or
- (d) a nominated judge refers a complaint to another nominated judge under rule 130(b)(ii).

#### **Nomination of a nominated judge**

**56.** A nominated judge must be nominated by the Lord Chief Justice in accordance with regulation 8 of the Regulations.

#### **Consideration by nominated judge**

**57.** The nominated 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.

**58.** For the purposes of considering a complaint the nominated judge 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.

**59.** Where the nominated judge considers that the office holder concerned has failed, without good reason, either to agree an interview date or to attend an interview which has been arranged, the nominated judge may consider the complaint without having interviewed the office holder concerned.

**60.** The nominated judge must ensure that a record is made of any interview they carry out under rule 58(c).

**61.** Before taking any of the actions set out in rule 63, the nominated judge must send to the office holder concerned—

- (a) any documents received under rule 58; and
- (b) any record of any interviews made under rule 60.

#### **Right to be accompanied to interview with nominated judge**

**62.** Where the office holder concerned is invited to attend an interview with the nominated judge, the office holder 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 office holder concerned when they have—
  - (i) been interviewed by a nominated judge; or
  - (ii) given oral evidence to an investigating judge or a disciplinary panel.

#### **Dismissal, referral and recommendations by nominated judge**

**63.** The nominated judge 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 68.

**64.** A nominated judge may only dismiss a complaint under rule 63(a) where they consider that there has been no misconduct.

**65.** If a nominated judge dismisses a complaint under rule 63(a) they may give the office holder concerned informal advice in writing.

**66.** Where the nominated judge dismisses a complaint under rule 63(a), they must inform the JCIO of the dismissal and the reasons for it and, if applicable, provide a copy of the informal advice that they have given to the office holder concerned.

**67.** Where the nominated judge provides information to the JCIO under rule 66, the JCIO must inform the complainant of the dismissal and the reasons for it and, if applicable, that informal advice has been given to the office holder.

**68.** The nominated judge 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.

**69.** Where a complaint is referred to an investigating judge, the JCIO must inform the office holder concerned and the complainant accordingly.

#### **Report of nominated judge**

**70.** The nominated judge must prepare a report if they—

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

- 71.** The report must state—
- (a) what findings of fact the nominated judge 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 judge considers should be issued and why.

**Reporting procedure of nominated judge and referral to a disciplinary panel**

- 72.** The nominated judge must send their report to the JCIO.
- 73.** The JCIO must send the report to the office holder concerned.
- 74.** Where the report recommends removal or suspension from office, when sending the report to the office holder concerned the JCIO must invite the office holder concerned to—
- (a) comment on the report; and
  - (b) state if they want a disciplinary panel to consider the complaint.
- 75.** The office holder concerned must provide any comments or response to the JCIO within 15 working days of an invitation under rule 74.
- 76.** The nominated judge may disclose their report to any other person and invite them to comment on it.
- 77.** Disclosure of the report under rule 76 —
- (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).
- 78.** Any comments on the draft report must be provided to the JCIO within ten working days of an invitation under rule 76.
- 79.** If the office holder concerned states under rule 75 that they want a disciplinary panel to consider the complaint, 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 report, any evidence which has been provided to the nominated judge, and any comments received under rule 75 or rule 78 to the disciplinary panel.
- 80.** Where a report has been prepared under rule 70(b) and rule 79 does not apply, the JCIO must send the report and any comments received under rule 75 or rule 78 to the Lord Chancellor and the Lord Chief Justice.

## PART 6

### Judicial investigation

#### Scope

- 81.** This Part applies where a referral is made to an investigating judge by—
- (a) a nominated judge under rule 68 or rule 130(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**

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

### **Investigation by investigating judge**

**83.** 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.

**84.** 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.

**85.** The JCIO must notify the office holder concerned and the complainant of the investigating judge's plans for the conduct of the investigation.

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

**87.** 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 86.

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

**89.** Where the investigating judge considers that the office holder 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 office holder concerned.

**90.** The investigating judge must ensure that a record is made of any oral evidence taken under rule 88.

**91.** The investigating judge must disclose any evidence provided under rule 87 and any record of oral evidence made under rule 90 to the office holder concerned and must invite them to make representations on the evidence.

**92.** The office holder concerned must make any representations within ten working days of an invitation under rule 91.

**93.** 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.

**94.** An investigating judge may only recommend that a complaint is dismissed under rule 93(a) where they consider that there has been no misconduct.

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

**95.** Where the office holder concerned is invited to give evidence to the investigating judge, the office holder 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 office holder concerned when they have—
  - (i) been interviewed by a nominated judge; or
  - (ii) given oral evidence to an investigating judge or a disciplinary panel.

### **Report of investigating judge**

**96.** 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**

**97.** The investigating judge must send their report to the JCIO.

**98.** The JCIO must send the report to the office holder concerned.

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

**100.** The office holder concerned must provide any comments or response to the JCIO within 15 working days of an invitation under rule 99.

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

**102.** Disclosure of the report under rule 101—

- (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).

**103.** Any comments on the report must be provided to the JCIO within ten working days of an invitation under rule 101.

**104.** The JCIO must send the report and any comments received under rule 100 or rule 103 to the Lord Chancellor and the Lord Chief Justice and to the office holder concerned.

## PART 7

### Disciplinary panel

#### Scope

**105.** This Part applies where—

- (a) the office holder concerned has stated under rule 75 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

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

#### Functions of a disciplinary panel

**107.** A disciplinary panel may consider and review—

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

**108.** Where a nominated judge has recommended that the office holder 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

**109.** 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.

**110.** The JCIO must invite the office holder concerned to state whether they want to give oral evidence to the disciplinary panel.

**111.** The office holder concerned must respond within ten working days of an invitation under rule 110.

**112.** A disciplinary panel must take oral evidence from the office holder concerned unless—

- (a) the office holder concerned has responded under rule 111 and stated that they do not want to give oral evidence;
- (b) the office holder concerned has not responded within ten working days as required by rule 111; or
- (c) the officer holder concerned has indicated that they want to give oral evidence under rule 111 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.



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

**114.** A disciplinary panel must ensure that a record is made of any oral evidence taken under rule 112 or rule 113.

**115.** 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.

**116.** A disciplinary panel may only recommend that a complaint is dismissed under rule 115(a) where they consider that there has been no misconduct.

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

**117.** Where the office holder concerned is to give oral evidence to the disciplinary panel, the office holder 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 office holder concerned when they have—
  - (i) been interviewed by a nominated judge; or
  - (ii) given oral evidence to an investigating judge or a disciplinary panel.

#### **Report of disciplinary panel**

**118.** 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**

**119.** The disciplinary panel must send its report to the JCIO.

**120.** The JCIO must send the report to the office holder concerned.

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

**122.** The office holder concerned must provide any comments to the JCIO within 15 working days of an invitation under rule 121.

**123.** The disciplinary panel may disclose its report to any other person and invite them to comment on it.

**124.** Disclosure of the report under rule 123—

- (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).

**125.** Any comments on the report must be provided to the JCIO within ten working days of an invitation under rule 123.

**126.** The JCIO must send the report and any comments received under rule 122 or rule 125 to the Lord Chancellor and the Lord Chief Justice and to the office holder concerned.

## PART 8

### Miscellaneous

#### **Re-opening a complaint that has been dismissed**

**127.** Exceptionally, a nominated judge may re-open a complaint that has been dismissed where they receive relevant new information concerning a complaint.

**128.** If a complainant, or other person or body, provides information to the JCIO after a complaint has been dismissed, the JCIO must refer such information to a nominated judge if the JCIO is satisfied that it is relevant new information within the meaning of rule 129.

**129.** 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.

**130.** If a nominated judge decides to re-open a complaint, they may—

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

**131.** Exceptionally, the JCIO may re-open a complaint after it has dismissed it under rule 23 if it considers 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**

**132.** Where a nominated judge receives information from any source which raises a question of misconduct by an office holder they must refer the case to the JCIO.

**133.** The JCIO must investigate a case referred to it under rule 132 in accordance with Part 2 of these Rules as though it were a complaint of misconduct (and as if the complaint had been made on the date on which the case is referred to the JCIO), with the exception that any obligation to be discharged in relation to a complainant does not apply.

#### **Withdrawal of a complaint**

**134.** A complainant may withdraw their complaint at any time.

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

- (a) the JCIO under Part 2 of these Rules if the JCIO considers it appropriate to continue to investigate the complaint;
- (b) a nominated judge under Part 5 of these Rules if the nominated judge 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.

**136.** Where rule 135 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 JCIO, the nominated judge, the investigating judge or the disciplinary panel as the case may be.

#### **Deferring consideration of a complaint**

**137.** Consideration of a case may be deferred where the JCIO considers that there is good reason to do so.

**138.** Where consideration of a case is deferred under rule 137, the JCIO must inform the complainant and, if they are aware of the complaint, the office holder concerned of the deferral and the reasons for it.

#### **Ceasing consideration of a case**

**139.** Consideration of a case may be ceased where the JCIO considers that there is no reasonable prospect of the matter being completed before the office holder concerned leaves office.

**140.** Where consideration of a case is ceased under rule 139, the JCIO must inform the complainant and, if they are aware of the complaint, the office holder concerned of this and the reasons for it.

Date *Lord Chief Justice*

I agree

Date *Lord Chancellor*

I agree

Date *Lord President of the Court of Session*

I agree

Date *Lady Chief Justice of Northern Ireland*