



JUDICIARY OF ENGLAND AND WALES



OJC
Office for
Judicial
Complaints

Complaints (Magistrates) Rules 2008.

www.judicialcomplaints.gov.uk

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INTRODUCTION

The Judicial Discipline (Prescribed Procedures) Regulations 2006 set out the process for the handling of complaints against all judicial office holders. Regulation 9(3) of the regulations provides that the Lord Chief Justice shall, with the agreement of the Lord Chancellor, make rules for dealing with complaints about justices of the peace.

These rules, made by the Lord Chief Justice, with the agreement of the Lord Chancellor set out the procedure for handling allegations of misconduct against Magistrates.

Expectations

The Lord Chancellor and the Lord Chief Justice have a firm expectation that Magistrates, like all other judicial office holders, will conduct themselves in such a way as to command the confidence of the communities they serve.

Magistrates must abide by the terms of the judicial oath which they swore on appointment (see below) and by the declaration and undertaking which they signed (the current text is at *Annex A*).

Judicial Oath

I,, do swear that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second in the Office of Justice of the Peace for, and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will. So help me God.

The Lord Chancellor and the Lord Chief Justice expect that all matters concerning the conduct of Magistrates will be dealt with:

- expeditiously (see '*Timetable for conduct and disciplinary matters*' at *Annex B*);
- sensitively (see '*Guide to confidentiality*' at *Annex C*);
- impartially; and
- with full regard to the independence of the judiciary.

Natural justice

In exercising their disciplinary powers the Lord Chancellor and the Lord Chief Justice will act only for good cause and will always observe the principles of natural justice. Advisory Committees should similarly always bear those principles in mind.

Decision making procedures should:

- be unbiased and in good faith;
- be fair, by providing, amongst other things, the individual with the case against them, and by giving the individual an opportunity to be heard; and
- include any reasons for the decision.

Confidentiality

Section 139 of the Constitutional Reform Act 2005 prohibits someone who obtains or is given confidential information for the purposes of dealing with judicial complaints and discipline from disclosing it except with lawful authority.

Information provided during the course of a complaint or conduct investigation should be considered to be confidential to the person who disclosed it; this applies equally to the complainant, the Magistrate who is the subject of the complaint and any other third party. The Guide to confidentiality at Annex C explains when information can be lawfully disclosed and sets out how the confidentiality requirements apply to each stage of the investigation process.

It is very important to have a clear understanding of the confidentiality requirements as the inappropriate disclosure of confidential information could result in the instigation of separate proceedings.

Following these procedures

The Lord Chancellor and the Lord Chief Justice are jointly responsible for determining complaints of misconduct against Magistrates; however, their disciplinary powers can only be exercised if the procedures prescribed by these rules have been complied with in all material respects. Therefore, the procedures in these rules should not be varied or adapted as failure to follow them could lead to a referral to the Judicial Appointments and Conduct Ombudsman and leave any decisions by the Lord Chancellor and the Lord Chief Justice open to challenge by way of review body or judicial review.

It is important that Advisory Committees seek advice from the Office for Judicial Complaints (“OJC”) if they are unsure of whether or how some aspect of the procedures might apply to the circumstances of an individual case.

Enquiry number

Advice on these procedures can be sought from the OJC enquiry number – 020 3334 2555.

ROLES AND RESPONSIBILITIES

The effective operation of these rules relies upon the interaction of individuals with varying roles and responsibilities. It is therefore important that both those tasked with handling complaints and users (including Magistrates who are the subject of complaints) have a clear understanding of the respective roles and responsibilities of everyone involved in the complaints handling process.

1. THE LORD CHANCELLOR AND THE LORD CHIEF JUSTICE

The Lord Chancellor and the Lord Chief Justice are together responsible for providing a system for considering and determining complaints of misconduct against the judiciary. Although each has some distinctive functions in relation to particular aspects of the system, overall responsibility for ensuring that complaints are properly investigated, and for deciding on any action which may be necessary, is a joint one involving both the executive and the judiciary working together.

Functions of the Lord Chancellor and the Lord Chief Justice

(a) Joint

In relation to Magistrates' conduct issues the Lord Chancellor and the Lord Chief Justice are jointly responsible for:

- the operation of the complaints system, including the supervision of the OJC;
- the appointment of investigating judges and any Review Body;
- setting and amending the terms of reference for any judicial investigation;
- referring a case to a Review Body; and
- the final decision in relation to individual complaints not dismissed by an Advisory Committee, in particular, deciding whether to uphold a complaint or make any adverse disciplinary finding and what, if any, disciplinary action to take.

(b) Each of the Lord Chancellor and the Lord Chief Justice

Each may decide (in agreement with the other, or separately) to:

- require that there be a judicial investigation; or
- refer a case, a series of cases or an issue to the Ombudsman.

(c) The Lord Chancellor

The Lord Chancellor is responsible for:

- accounting to Parliament for the operation of the complaints and discipline system (but not for the outcome of cases, or for actions taken in individual cases by him or the Lord Chief Justice);
- agreeing to the regulations and rules which the Lord Chief Justice makes to govern the system and managing any Parliamentary procedures required in connection with them;
- providing and resourcing an effective and efficient complaints secretariat; and providing any other resources which he agrees may be required in the course of investigations or to support a Review Body;
- removing a Magistrate, with the agreement of the Lord Chief Justice:
 - Section 11 of the Courts Act 2003 provides that the Lord Chancellor may remove a Magistrate from office:
 - on the ground of incapacity or misbehaviour;
 - on the ground of a persistent failure to meet such standards of competence as are prescribed by a direction given by the Lord Chancellor with the concurrence of the Lord Chief Justice; or
 - if he is satisfied that the Magistrate is declining or neglecting to take a proper part in the exercise of his functions as a justice of the peace.

(d) The Lord Chief Justice

The Lord Chief Justice is responsible for:

- making the regulations and rules which govern the system, with the Lord Chancellor's agreement;
- the imposition (personally, or through an appropriate person chosen by him*) of any formal sanctions short of removal which have been agreed between him and the Lord Chancellor:
 - Section 108 of the Constitutional Reform Act 2005 provides that, with the agreement of the Lord Chancellor, and after following the procedures prescribed by these rules and the regulations, the Lord Chief Justice may:
 - give a judicial office holder formal advice, or a formal warning or reprimand;
 - suspend a judicial office holder from judicial office for any period in which the judicial office holder is subject to criminal proceedings, is serving a sentence imposed in criminal proceedings, or has been

- suspend a judicial office holder from judicial office for any period if the judicial office holder has been convicted of a criminal offence, it has been determined under the procedures prescribed by these rules and regulations that the judicial office holder should not be removed from office, and 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; or
 - suspend a judicial office holder for any period during which he or she is under investigation for an offence or is subject to the procedures prescribed in these rules and regulations;
- any associated deployment issues;
 - nominating a representative to participate in the selection of the Head of the OJC, and approving any proposals by the Lord Chancellor to extend or curtail his or her contract;
 - the exercise of his existing informal powers which include guiding or counselling any judicial office holder (as preserved by section 108(3) of the Constitutional Reform Act 2005).

*The Lord Chief Justice has delegated his responsibilities (below removal considerations) in relation to Magistrates' conduct to a High Court judge.

2. ADVISORY COMMITTEES

The role of the Advisory Committee is to handle any matter about a Magistrate, which brings into question the possible exercise of disciplinary powers by the Lord Chancellor and the Lord Chief Justice; and to support the Lord Chancellor and the Lord Chief Justice in the decision making process by providing advice.

When making recommendations to the Lord Chancellor and the Lord Chief Justice Advisory Committees must have regard to the sanctions/options available to the Lord Chancellor and the Lord Chief Justice. In particular suspension from office cannot be imposed as a disciplinary sanction (see Roles and Responsibilities of the Lord Chancellor and the Lord Chief Justice above, rules 32 and 33 and paragraphs 88 to 90).

The Lord Chancellor and the Lord Chief Justice expect Advisory Committees to handle complaints in a timely manner and in accordance with the procedures prescribed in these rules. There will be occasions when it is necessary to transfer the handling of a complaint to an alternative Advisory Committee. If an Advisory Committee agrees to handle a complaint on behalf of another Advisory Committee it must ensure that it has the capacity to handle the complaint in accordance with the expectations of the Lord Chancellor and the Lord Chief Justice.

3. ADVISORY COMMITTEE CHAIRMAN

The Advisory Committee Chairman (or Deputy) will handle all disciplinary matters in the first instance, with the advice and assistance of the Secretary.

Rule 18 details the functions that the Chairman can perform on behalf of the Advisory Committee.

Where a matter falls to be considered further the Chairman (or Deputy) will appoint a conduct investigation panel or conduct panel which will report, as necessary, to the Lord Chancellor and the Lord Chief Justice (see rule 29).

4. ADVISORY COMMITTEE SECRETARY

The Advisory Committee Secretary is responsible for providing administrative support to conduct investigation and conduct panels and for ensuring that copies of these rules are made available to the subject of a complaint, Magistrates or members of the public wishing to make a complaint, and anyone else involved in conduct and disciplinary matters.

The Secretary is also responsible for providing regular progress updates to the parties to the complaint. When handling complaints on behalf of another Advisory Committee, the Secretary assumes responsibility for providing updates to the parties until the complaint is concluded (see rules 35 & 36).

The record keeping and reporting responsibilities of the Secretary are detailed below (page 11).

5. BENCH CHAIRMEN

Bench Chairmen have a pastoral role; they derive their responsibility for dealing with pastoral matters from the Lord Chief Justice, who, as President of the Courts of England and Wales, is responsible for the arrangements for the welfare, training and guidance of the judiciary of England and Wales. Therefore, detailed guidance on the role of the Bench Chair has been produced by Judicial Office and can be found in the booklet entitled "*Directions to Bench Chairmen*" (copies available from Judicial Office).

Bench Chairmen do not deal with conduct matters and have no authority to take disciplinary action. Disciplinary action can only be taken by the Lord Chancellor and the Lord Chief Justice. Matters of concern are, however, often raised with the Bench Chairman directly. In such situations the Bench Chairman must determine (in consultation where necessary with the Advisory Committee Chairman and the Justices' Clerk) whether or not the matter can be resolved without any kind of disciplinary action.

If disciplinary action may be required the matter should be referred to the Advisory Committee to be dealt with in accordance with these rules.

6. THE JUSTICES' CLERKS/BENCH LEGAL MANAGERS

Justices' Clerks and Bench Legal Managers have an advisory role in relation to conduct complaints, as they may be called upon to provide advice to the Bench Chairman or the Advisory Committee Chairman as necessary. They are also well placed to provide advice to the Advisory Committee Chairman on the appropriateness of a Magistrate continuing to sit while any matter is ongoing.

Justices' Clerks and Bench Legal Managers cannot discipline Magistrates in their own right or on behalf of anyone else.

7. THE OFFICE FOR JUDICIAL COMPLAINTS (OJC)

The OJC was launched in April 2006 to support the Lord Chancellor and the Lord Chief Justice in their joint responsibility for judicial conduct and discipline.

The OJC are responsible for the maintenance and provision of these rules. The office advises the Lord Chancellor and the Lord Chief Justice on the content of the rules and has responsibility for supplying Advisory Committees with sufficient copies to enable them to perform their duties.

The OJC have a general advisory role in relation to the work of Advisory Committees and they can be contacted for advice on any issue relating to the operation or interpretation of these rules. It will not always be possible to provide an immediate response to a request for advice; however, in such situations the OJC will provide the Advisory Committee with regular updates (the Advisory Committee Secretary retains responsibility for updating the parties to the complaint).

The role of the OJC in relation to complaints against Magistrates is detailed in rules 77-87.

8. THE JUDICIAL APPOINTMENTS AND CONDUCT OMBUDSMAN (JACO)

Section 110 of the Constitutional Reform Act 2005 provides for the Magistrate who is the subject of the complaint or the complainant to apply to the JACO to review the exercise of disciplinary powers by the Lord Chancellor and the Lord Chief Justice on the grounds that there has been a failure to comply with prescribed procedures, or some other maladministration. Very generally, the JACO may only review a case if:

- he or she considers that the review is necessary;
- the application is made within 28 days (this period may be extended in exceptional circumstances); and
- the application is in an approved form.

See section 110 for further detail about exactly when and in what circumstances an application can be made.

The JACO cannot substitute his own decision about the merits of a complaint, rebuke or reprimand a Magistrate, or decide to trigger procedures for removing a Magistrate from office. If satisfied that the grounds of the complaint are justified to any extent, he can:

- make recommendations to the Lord Chancellor and the Lord Chief Justice. Such recommendations may include the payment of compensation in respect of any loss which the applicant has suffered as the result of any failure or maladministration to which the application relates; or
- if he decides that any determination is unreliable because of any such failure or maladministration, set the determination aside.

If a determination is set aside, any investigation or review leading to the determination will be disregarded and the process will start afresh.

When the JACO receives a referral he will contact the relevant Advisory Committee to request all relevant information. It is therefore important that Advisory Committees keep a note of the procedures followed and reasons for any delays or decisions made.

The JACO will then review the case and prepare a report containing his findings. Advisory Committees will be given an opportunity to comment on the draft report. Further information about the role of the JACO can be obtained from (www.judicialombudsman.gov.uk)

RECORD KEEPING

Written records on complaints and conduct matters will be kept by the Advisory Committee Secretary. All such records (including tape recordings) will be securely stored in court premises or on premises occupied by the Advisory Committee.

The Advisory Committee Secretary should open a separate file for each complaint or conduct matter received. Documents relating to this complaint should be placed on the file and will include:

- a copy of the original complaint or allegation, including any statements by third parties;
- the Magistrate's response;
- the transcript and report of the conduct investigation panel;
- the concluding correspondence (e.g. letters from the Chairman of the Advisory Committee, the OJC, the Lord Chancellor or the Lord Chief Justice to the Magistrate recording the outcome);
- copies of all other relevant documents, e.g. any supporting evidence, correspondence with the complainant or the OJC, or advice to the Bench Chair or the Chair of the BTDC.

There will be occasions when Chairs and members of Advisory Committees need to hold records/copy papers at their home address, for example to allow them to study them in advance of a conduct investigation hearing. However, as these records are confidential, they should not be kept at home for longer than is absolutely necessary and all records should be returned to the Advisory Committee Secretary immediately after the Chair or Advisory Committee's members have completed their action and those copies should be destroyed.

Retention periods

DCA Circular AC (2) 2006 provides the following guidance on the retention of papers relating to complaints:

Papers Relating to:	Guidance
Complaints which have been investigated by a conduct investigation panel.	Retain on the personal file.
Complaints dismissed without a conduct investigation panel.	Retain for three years after the last action and then destroy.
Pastoral matters dealt with by the Bench Chair.	Justices' Clerk to retain on behalf of the Bench Chair. Papers to be transferred to the Advisory Committee upon the Magistrate's resignation/retirement and retained on the personal file in accordance with above guidance.
Minutes of Advisory Committee meetings and other internal documents.	Destroy after 10 years.

REPORTING ON COMPLAINTS

The Advisory Committee Secretary should report to the OJC, on a case-by-case basis, any case:

- (a) which has been referred to it by the Lord Chancellor or the Lord Chief Justice under regulations 13 or 9(4)-(5);
- (b) where the complaint is about behaviour or remarks of a racist, sexist or other discriminatory nature; or
- (c) where the panel has decided to recommend that the Lord Chancellor and the Lord Chief Justice exercise any of their disciplinary powers (the procedure to be followed in this situation is detailed in rules 70- 72)

The OJC is required to provide the Lord Chancellor and the Lord Chief Justice with regular statistical reports on the number and type of complaints about judicial office holders received. To enable the OJC to do this, the Advisory Committee Secretary should provide a statistical breakdown of complaints about the conduct of Magistrates in their area received in the previous 6 months by the end of March and the end of September, each year. This breakdown should include the:

- total number of complaints received;
- number of complaints which have been dismissed; and
- number of complaints which have been investigated by a conduct investigation panel.

A copy of the reporting form is attached at Annex F. An electronic copy of the reporting form can also be obtained from the OJC (contact our enquiry line 020 3334 2555).

MAGISTRATES' COMPETENCE

The assessment of Magistrates' competence is a matter for Bench Training and Development Committees. Annex E details the procedure which must be followed (but which does not form part of the Complaints (Magistrates) Rules 2008) where an allegation of lack of competence arises and before the Lord Chancellor will consider removing a Magistrate for failing to meet standards of competence as set out in section 11(2)(b) of the Courts Act 2003. That section provides that the Lord Chancellor may remove a Magistrate "on the ground of a persistent failure to meet such standards of competence as are prescribed by a direction given by the Lord Chancellor with the concurrence of the Lord Chief Justice."

Complaints (Magistrates) Rules 2008

(An asterisk after a rule denotes that there is additional guidance available from pages 42-46. If viewing the electronic version of this document clicking the asterisk will jump your view to the relevant guidance. Clicking the link on the guidance will revert your view).

The Lord Chief Justice of England and Wales, in exercise of his powers under sections 115 and 117 of the Constitutional Reform Act 2005, and regulation 9(2) of the Judicial Discipline (Prescribed Procedures) Regulations 2006 (S.I. 2006/676), and with the agreement of the Lord Chancellor, makes the following rules —

Citation, commencement and application

1. These rules may be cited as the Complaints (Magistrates) Rules 2008 and shall come into force on 28th August 2008.
2. These Rules apply to any complaint, including any complaint made before 28th August 2008 which has not been withdrawn, dismissed or determined.

Revocation

3. The Complaints (Magistrates) Rules 2006 are revoked.

Interpretation

4. In these rules:

“the Act” means the Constitutional Reform Act 2005;

“Advisory Committee” means one of the Lord Chancellor’s Advisory Committees on the appointment of justices of the peace;

“BTDC” means a Bench Training and Development Committee;

“business day” means any day except Saturday, Sunday or a bank holiday, and “bank holiday” includes Christmas Day and Good Friday;

“case” means a complaint or issue being considered under these rules or a referral made under regulation 13;

“complaint” means a complaint containing an allegation of misconduct by a judicial office holder;

“disciplinary action” means the exercise by the Lord Chancellor of his power to remove a Magistrate from office under section 11 Courts Act 2003; the exercise

by the Lord Chief Justice of his powers under section 108(3), (4) and (5) of the Act;

“judicial office holder” means a senior judge, a holder of an office listed in Schedule 14 to the Act, or the holder of an office which has been designated by an order under section 118 of the Act;

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

“OJC” means the Office for Judicial Complaints;

“regulations” means the Judicial Discipline (Prescribed Procedures) Regulations 2006;

“the subject of the disciplinary proceedings” means the Magistrate whose conduct is being considered in accordance with these rules.

Judicial office holders to whom these rules apply

5. (a) These rules apply to complaints of misconduct against Magistrates on the active list.

(b) Complaints by HMCS employees will have been considered in accordance with the procedures in the “Framework for the initial handling of complaints made by Ministry of Justice employees alleging misconduct by Judicial Office Holders”^{*}.

Time limits within which a complaint must be made

6. In accordance with regulation 4 complaints must be made within 12 months of the event or matter complained of; but a complaint relating to a continuing state of affairs may be made at any time while that state of affairs continues or within 12 months from when it ends.^{*}
7. Subject to rule 11, an Advisory Committee must dismiss a case without further investigation if the complaint is made outside the time limits set out in rule 6.
8. The complainant should be informed of the reasons for the dismissal and advised of the right to make representations to the OJC to refer a request for an extension to the Lord Chancellor or the Lord Chief Justice.

Time limits for the completion of an act

9. The Lord Chancellor and the Lord Chief Justice expect that all matters concerning the conduct of Magistrates will be dealt with expeditiously, and the time limits in these rules provide a framework to ensure that all conduct matters are dealt with in

such a manner. The time limits must, therefore, be adhered to unless there is good reason for non-compliance. *

10. The Advisory Committee should keep a record of the reasons for failing to meet a time limit within these rules.

Extension of time limits

11. (a) An Advisory Committee may extend a time limit under these rules, whether or not the time limit has expired, where there is good reason to do so.

(b) Where an Advisory Committee has extended a time limit, it should:

- (i) keep a record of the reasons for extending a time limit: and
- (ii) inform the parties to the complaint of the reason for the extension.

Measurement of time for doing an act

12. In these rules the time for doing any act in response to a notification, invitation or request made under the rules runs from the second business day on which the notification or request is sent by first class post, e-mail or fax to the person invited or required to do that act.

Complaints and referrals

13. Complaints about misconduct should be made to the local Advisory Committee or its Secretary. *

14. Complaints must normally be made in writing. *

15. The Chairman of the Advisory Committee should decide who will handle the complaint and pass it to the relevant person within 3 business days.*

16. The Advisory Committee Secretary should inform the complainant whether the matter is being handled by the Bench Chairman or the Advisory Committee and should provide the name and contact details of the person who is going to deal with the complaint. This should take place at the same time that the complaint is passed to the appropriate person in accordance with rule 15.

17. Where no formal complaint has been made but an Advisory Committee receives information from any source which suggests that disciplinary proceedings might be justified, the Advisory Committee may investigate the matter in accordance with the procedures in these rules. *

The Investigation process by the Advisory Committee Chairman

18. (a) The Advisory Committee will handle complaints, in consultation with the Advisory Committee Secretary.

(b) The Chairman (or nominated deputy) is able to act on behalf of the Advisory Committee in relation to any of its functions under rules 7, 17 & 19-31*.

19. (1) Once it has been determined that a complaint relates to an issue of misconduct, the Advisory Committee must decide whether the complaint should be dismissed or should be investigated further. *

(2) However, where an account of facts given by a complainant differs from an account given by the Magistrate about whom the complaint is made, the Advisory Committee should consult any independent evidence which exists which may verify the facts in dispute before it dismisses the complaint, unless to do so would be disproportionate in all the circumstances.

20. The Advisory Committee must dismiss a complaint, or part of a complaint, if it falls into any of the following categories:

(a) it does not adequately particularise the matter complained of;

(b) it is about a judicial decision or judicial case management, and raises no question of misconduct;

(c) the action complained of was not done or caused to be done by a Magistrate;

(d) it is vexatious;

(e) it is without substance or, even if substantiated, would not require any disciplinary action to be taken;

(f) it is untrue, mistaken or misconceived;

(g) it raises a matter that has already been dealt with, whether under these regulations or otherwise, and does not present any material new evidence;

(h) it is about a person who no longer holds any judicial office;

(i) it is about the private life of a Magistrate and could not reasonably be considered to affect his suitability to hold judicial office;

(j) it is about the professional conduct in a non-judicial capacity of Magistrate and could not reasonably be considered to affect his suitability to hold judicial office;

(k) for any other reason it does not relate to misconduct by a Magistrate. *

21. The Advisory Committee may not dismiss a complaint under rule 20(a) unless it has given the complainant a reasonable opportunity to provide adequate particulars of the complaint.
22. A decision on whether the complaint can be investigated should be made within 7 business days of the decision under rule 15.
23. If the Advisory Committee dismisses a complaint under any of the provisions of rule 20 it must inform the subject of the complaint and the complainant of the reason for the decision, and inform the Magistrate that the complaint will not be taken into account in any further disciplinary proceedings.
24. If the complaint is to be investigated the Advisory Committee must write to the Magistrate providing him with details of the complaint, any supporting papers, a copy of these rules, and a copy of section 139 of the Act which sets out obligations in relation to confidentiality.
25. It is not necessary to ask complainants for permission to show a complaint to the Magistrate concerned. [*](#)
26. The Magistrate should be asked to provide comments or an explanation in writing within 10 business days.
27. A copy of the complaint and any supporting papers together with a copy of the letter seeking the Magistrate's comments should also be sent to the Bench Chairman.
28. The Advisory Committee should determine whether it is necessary to obtain statements from third parties who may be able to provide evidence in relation to the allegations.
29. After receiving the Magistrate's comments the Advisory Committee may decide:
 - (a) to dismiss the complaint under the provisions of rule 20;
 - (b) to appoint a conduct investigation panel to investigate the complaint further;
 - (c) to direct that the complaint be resolved locally as a pastoral or training matter; or
 - (d) where the Magistrate accepts the misconduct alleged, to appoint a conduct panel to make recommendations to the Lord Chancellor and the Lord Chief Justice. [*](#)
30. (a) Where the Magistrate fails without good reason to respond to the request for comments in accordance with rule 26 the Advisory Committee should appoint a conduct investigation panel to investigate the complaint further.

(b) Investigations conducted by a conduct investigation panel due to Magistrate's failure to respond can be determined on the papers.

31. (a) If the complaint is to be investigated further the Advisory Committee should consider whether it is appropriate for the Magistrate to continue sitting or discharge any other magisterial duty until the complaint has been resolved.

(b) Where the Advisory Committee Chairman considers that the Lord Chief Justice might need to exercise his powers to suspend a Magistrate he or she should send a report to that effect to the OJC. *

Composition of the conduct investigation panel and the conduct panel

32. An Advisory Committee conduct investigation panel or conduct panel should be comprised of three or four people drawn from the Advisory Committee. If this is not possible members may be drawn from a Sub-Committee. *

33. (a) Conduct investigation panel hearings and conduct panel hearings should take place within 20 business days of the receipt of the Magistrate's written comments or explanation. *

(b) Where no comments are received the hearing should take place within 20 days of the date set for the receipt of comments. *

The role of the Advisory Committee Secretary

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

35. The Secretary must keep the complainant and the Bench Chairman notified of the progress of the complaint. *

The conduct investigation panel

36. The Secretary should write to the Magistrate, on the Chairman's behalf, inviting him or her to attend a conduct investigation hearing. The letter must:

(a) set out all of the issues under consideration;

(b) inform the Magistrate of his or her right to be accompanied at the hearing;

(c) ask for details of any third party whom the Magistrate wishes to provide evidence on his or her behalf; and

(d) invite the Magistrate to submit statements from anyone able to provide evidence on his or her behalf.

37. The panel should determine whether it is necessary to obtain statements and/or hear from third parties who may be able to provide evidence in relation to the allegations. *

38. (a) Records on the Magistrate's file may need to be taken into account by the conduct investigation panel at the conclusion of the investigation. The Advisory Committee Secretary should write separately and in advance to the Magistrate to inform him or her of this and to ask for written representations on any such records.

(b) Any records on the Magistrate's files must not be shown to the conduct investigation panel unless the panel decide that the complaint is substantiated. *

39. (a) The panel should consider the matter on the papers if a Magistrate fails, without good reason, either to agree a hearing date or to attend a conduct investigation hearing which has been arranged.

(b) A record must be made of the panel's reasons for proceeding in the absence of the Magistrate.

40. The panel should consider, in consultation with the Bench Chairman and Justices' Clerk, whether it is appropriate for a Magistrate to abstain from duties where he or she has failed to provide written comments, agree a hearing date or attend a conduct investigation hearing. *

Conduct investigation hearings

41. (a) Any written evidence that becomes available after the Magistrate was asked for comments or explanation should, if possible, be copied to him or her immediately it is received, and no later than three business days before the hearing.

(b) Delivery can be made in person, by first class post or courier, fax or e-mail.

42. (a) Where it has not been possible to supply information in accordance with rule 41, the hearing may only proceed with the Magistrate's consent after he or she has seen the evidence and had an opportunity to consider it.

(b) If the Magistrate wants more time to consider the evidence, the hearing must be adjourned.

(c) The hearing must not proceed on the basis that the panel will discount evidence it has already seen.

- 43.** (a) Each member of the conduct investigation panel should be in possession of a copy of the complaint, the Magistrate's response and any other written evidence.
- (b) The panel should not have seen, heard, or be in possession of, evidence that has not been disclosed to the Magistrate concerned.
- 44.** The Secretary should arrange for a full and accurate note of the proceedings to be taken. *
- 45.** At the hearing the Chairman should introduce him or herself, and the other panel members by name, indicating whether they are Magistrates or not and:
- (a) explain the roles of all people present;
- (b) check that the Magistrate is in possession of all the papers;
- (c) inform the Magistrate:
- (i) why he or she has been asked to attend;
- (ii) that the panel will be considering only the matters about which the Magistrate has been informed;
- (iii) that he or she will be given every opportunity to comment and to put his or her point of view; and
- (iv) that only the Lord Chancellor and the Lord Chief Justice can remove or discipline a Magistrate, although the panel may make recommendations.
- 46.** The Chairman should explain the confidentiality requirements to the Magistrate and all those attending the hearing and ensure that they are provided with a copy of the guidance at *Annex C*.
- 47.** If the Magistrate is accompanied he or she must be informed that the accompanying person cannot take an active part in the hearing and that his or her role will be to observe and to advise the Magistrate if necessary.
- 48.** In exceptional circumstances, where information has only recently come to light, the panel may agree to hear evidence from a witness on behalf of the Magistrate of whom they have only been notified on the day.
- 49.** There is no requirement for evidence to be given under oath.
- 50.** The substantive part of the hearing should begin with the Magistrate being asked whether he or she agrees wholly or in part with the facts as set out in the papers.
- 51.** The facts should be checked chronologically, if possible, separating those which are agreed from those which are disputed, and following up the latter with appropriate questions.

- 52.** (a) The Magistrate should be invited to answer any questions raised. The panel should not interrupt unless anything the Magistrate says is ambiguous. *
- (b) Follow up questions may be asked when the Magistrate has responded to the initial questions.
- 53.** Any person providing evidence to the panel should attend only for the purposes of giving evidence and should not be present during any other part of the proceedings. They may be accompanied, while giving evidence, but unless there are wholly exceptional circumstances, they should be expected to speak for themselves
- 54.** The Magistrate who is the subject of the complaint must be given the opportunity to hear any evidence given to the panel and be invited to comment on that evidence after a person giving such evidence has finished, but before that person has left the room.
- 55.** The Magistrate must not be allowed to cross-examine the person concerned; but the panel Chairman may wish to follow-up any issues which the Magistrate's comments have raised.
- 56.** When this process has finished, the Magistrate should be asked if there is anything in conclusion which he or she wishes to say to the panel.
- 57.** The Magistrate should be informed by the Secretary that he or she will receive a copy of the note of the proceedings and notification of the conclusion of the panel, within 10 business days.
- 58.** (a) The panel should meet immediately after the hearing and complete its report within three business days of the hearing.
- (b) Save for exceptional circumstances, it should not be necessary for the panel to await receipt of a transcript of the hearing. *
- 59.** The panel must first form a view on the facts of the case and note the reasons for their findings. *
- 60.** The panel should then proceed to make their recommendations based on the facts that they have agreed and note their reasons for each recommendation. *
- 61.** If the panel conclude that the case is substantiated in whole or in part:
- (a) the Secretary should put before the panel any relevant records relating to other conduct matters brought to the Magistrate's attention in the past, together with any written representations made by the Magistrate about the accuracy of the record; and
- (b) the panel should then move on to consider what advice they will offer to the Lord Chancellor and the Lord Chief Justice on whether disciplinary action should be taken, and if so what.

62. The panel should prepare their report setting out:

- (a) the details of the complaint;
- (b) a summary of the evidence presented;
- (c) a full explanation of the panel's reasoning; and
- (d) a clear statement of their recommendations.

The conduct panel

63. The Secretary should write to the Magistrate, on the Chairman's behalf to:

- (a) advise him or her that a conduct panel will be convened to make recommendations to the Lord Chancellor and the Lord Chief Justice on the admitted facts of the complaint;
- (b) request his or her written representations on any records on their file which may be taken into account by the conduct panel; and
- (c) inform him or her of the right to make written or oral representations to the panel before they make their recommendations and to be accompanied to the hearing. *

The conduct panel hearing

64. The conduct panel must consider all of the relevant papers including any relevant records relating to other conduct matters and any written representations from the Magistrate who is the subject of the complaint and then determine the appropriate recommendations having regard to all of the circumstances.

65. If the Magistrate is present at the hearing the Chairman should:

- (a) introduce him or herself, and the other panel members
- (b) explain the purpose of the hearing and the confidentiality requirements; and
- (c) provide the Magistrate with an opportunity to make representations to the panel before they consider their recommendations.

66. The Secretary should arrange for a full and accurate note of the proceedings to be taken.

67. The conduct panel should make their recommendations based on the agreed facts and note their reasons for each recommendation. *

68. The conduct panel's report should be prepared immediately setting out:

- (a) the details of the complaint;

- (b) a full explanation of the panel's reasoning; and
- (c) a clear statement of its recommendations.

Procedure after Conduct Investigation Panel and Conduct Panel Hearings

69. Where the panel decide to recommend a disciplinary sanction a copy of the panel's report must be sent to:

- (a) The Advisory Committee Chairman;
- (b) The Magistrate who is the subject of the report; and
- (c) The OJC.

70. The Magistrate should be informed, when he or she is sent a copy of the report, that the OJC will write to him or her to invite representations on the report.

71. The copy of the report sent to the OJC and the Advisory Committee Chairman must be accompanied by a copy of:

- (a) The complaint;
- (b) The Magistrate's response;
- (c) Any other written evidence considered by the panel; and
- (d) A full and accurate note of the hearing

72. The Bench Chairman, the Justices' Clerk and the complainant should be informed that the panel's report has been sent to the OJC. *

73. Where the panel decide to recommend dismissal of the complaint they should:

- (a) report their findings to the Advisory Committee for a decision;
- (b) send a copy of the report to the Magistrate who is the subject of the report; and
- (c) inform the Bench Chairman of their recommendation. *

74. If the Advisory Committee agrees that the case should be dismissed it should:

- (a) write to the Magistrate who is the subject of the report and to the complainant notifying them of the outcome and the reasons for the decision;
- (b) inform the complainant of the right to refer the complaint to the Judicial Appointments and Conduct Ombudsman; *
- (c) place a copy of the papers on the Magistrate's file; and

(d) inform the Magistrate that the papers will be placed on his or her personal file but that they cannot be referred to in any future disciplinary proceedings.

75. (a) If the complaint raises any pastoral or training issues, the Advisory Committee should always consider whether to refer those issues to the Bench Chairman and/or the Chairman of the BTDC as appropriate. *

(b) The Justices' Clerk should be consulted and kept informed of any action taken in this respect.

(c) Any correspondence with the Bench or BTDC Chairman should be copied to the Magistrate.

76. The Advisory Committee should comply with the requirements of rules 74 and 75 within 5 business days of receiving the panel's report

The role of the OJC

77. On receipt of the conduct investigation or conduct panel's report the OJC will examine the papers 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.

78. Where procedures have not been followed, the OJC may remit the case back to the Advisory Committee Secretary with advice as to further action.

79. (a) Where the requirements of rule 77 are met, the OJC will write to the Magistrate within 5 business days of receipt of the report inviting him or her to submit his or her representations on the contents of the report.

(b) The Magistrate should be asked to provide representations within 10 business days.

80. The OJC will consider any representations received from the Magistrate and determine if it is necessary to seek legal advice and whether to seek further clarification of any points raised.

81. Once enquiries under rule 80 have been concluded the OJC will submit advice with a copy of the conduct investigation panel or conduct panel report and any representations from the Magistrate to the Lord Chancellor and the Lord Chief Justice for their decision.

82. If no representations are received from the Magistrate at the end of 10 business days of the invitation to comment, the OJC will submit advice with a copy of the conduct investigation panel report or conduct panel report to the Lord Chancellor and the Lord Chief Justice for their decision.
83. If no enquiries are required under rule 80 the OJC must submit advice to the Lord Chancellor and the Lord Chief Justice within 10 business days of receipt of the Magistrate's representations.
84. If enquiries are required under rule 80 the OJC must submit advice to the Lord Chancellor and the Lord Chief Justice within 10 business days of the conclusion of those enquiries.
85. If no representations are received under rule 79 the OJC will submit advice to the Lord Chancellor and the Lord Chief Justice within 10 business days of the expiry of the 10-day invitation period for representations.
86. The OJC will send monthly updates to the Advisory Committee Secretary who will in turn keep all parties to the complaint informed of the progress of the case.

The following paragraphs set out the procedure (together with further guidance) which will generally be followed when the Lord Chancellor and the Lord Chief Justice determine a conduct case. These paragraphs serve as guidance, do not form part of the rules or regulations, nor do they create any additional obligation for the Lord Chancellor or the Lord Chief Justice to comply with which is not already contained in the rules or Regulations.

The decision of the Lord Chancellor and the Lord Chief Justice

87. (a) The Lord Chancellor and the Lord Chief Justice should reach a joint decision on any disciplinary sanction to be applied in accordance with Regulations 26 and 27.
 - (b) In cases of removal from the magistracy the Lord Chancellor should write personally to the Magistrate concerned informing him or her of the decision and the reasons for it.
 - (c) In cases of disciplinary action below removal the Lord Chief Justice (or his delegate) should write personally to the Magistrate concerned informing him or her of the decision and the reasons for it.
 - (d) The Lord Chancellor's or the Lord Chief Justice's letter to the Magistrate should:
 - (i) notify the Magistrate that the case will be recorded in a form that may be referred to in any future disciplinary proceedings;

- (ii) include details of the Judicial Appointments and Conduct Ombudsman's jurisdiction;
 - (iii) advise the Magistrate that he or she has 10 business days in which to apply for a reference to a review body (review body procedures are referred to in part 7 of the Regulations); and
 - (iv) be copied to the relevant Advisory Committee Secretary.
- 88.** Where the Lord Chancellor and the Lord Chief Justice consider it appropriate to impose a more serious penalty than that recommended by the conduct investigation panel or the conduct panel they should notify the Magistrate of their proposal and seek further representations before they reach a final decision.
- 89.** The Lord Chancellor and the Lord Chief Justice attach considerable weight to the views of Advisory Committees. They are particularly appreciative of the care, attention and sensitivity that panels display in the handling of conduct matters and they consider it essential that panels should not be inhibited from recommending what they consider to be appropriate. There will be occasions, however, when they may not agree with the recommendation of the Advisory Committee. This may occur where, for example, they determine that the findings are not supported by evidence, that the recommendations are not commensurate with the misconduct or that the procedures set out in these rules have not been followed. In other instances they may consider that a different course of action is appropriate in the overall interests of the magistracy.
- 90.** (a) Whether or not the Lord Chancellor and the Lord Chief Justice propose to take disciplinary action, the Lord Chief Justice may require a Magistrate to receive further training, mentoring and/or appraisal.
- (b) If the Lord Chief Justice decides of his own volition to propose further training, mentoring and/or appraisal, the OJC should discuss the proposal with the Justices' Clerk and/or the Chair of the BTDC, in order to advise the Lord Chief Justice on the practicality of the proposed action and the likely time limits for completion.
- (c) When writing to the Magistrate under paragraph 88 the Lord Chief Justice should also set out the nature and purpose of any training, why it is required, the possible consequences of not undertaking it and should invite representations within 10 business days.
- (d) Once the training has been agreed the Lord Chief Justice should set a date for the completion of the training and delegate responsibility for ensuring that the training is implemented to the Bench Chair who will need to liaise with the Justices' Clerk and the Chairman of the BTDC (see also guidance to rule 75).

Implementing the decision of the Lord Chancellor and the Lord Chief Justice

91. Within 3 business days of receipt of the decision of the Lord Chancellor and the Lord Chief Justice the Advisory Committee Secretary must inform the following of the outcome of the case:

- (a) The Chairman of the Advisory Committee;
- (b) Members of the conduct investigation and conduct panel;
- (c) The complainant;
- (d) The Bench Chairman;
- (e) The Justices' Clerk and
- (f) Any other relevant persons who should be informed. (The nature of the Lord Chancellor's and the Lord Chief Justice's decision will determine whether any other action needs to be taken by the Bench Chairman or Justices' Clerk.)

CJ

Date 23rd June 2008

I agree

C

Date 26th June 2008

ANNEX A

MAGISTRATES' DECLARATION AND UNDERTAKING

DECLARATION AND UNDERTAKING

My full name

My full address

If I am appointed a Magistrate for the local justice area of:

SECTION 1

I acknowledge and undertake:

- that it will be my duty to administer justice according to the law;
- that I will 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;
- that I will respect confidences;
- that I will complete all training which may, from time to time, be prescribed by the Lord Chancellor. I will offer to resign from the Commission Area if I fail to complete this training in the time specified without a reason acceptable to the Lord Chancellor;
- that I will complete within one year of an appointment to the Panel of a Youth or Family Court, the basic instruction in the special work of the Panel; to resign from the Panel if I fail to complete this training within the time specified unless the Lord Chancellor has consented to an extension of that period;
- that I will sit for at least 26 half days each year; to resign from the Commission if, without a reason acceptable to the Lord Chancellor, I fail to complete the minimum number of sittings;
- that I will resign from the Commission if I become disqualified to sit as, or am unable to perform the duties of a Magistrate;
- that I will answer questions asked in surveys in relation to establishing the balance of the Bench, as required by the Lord Chancellor or the Advisory Committee.
- that my actions as a Magistrate will be free from any political, racial, sexual or other bias.

SECTION 2

I undertake to inform the Chairman and the Clerk to the Justices of my local justice area:

- of any impending criminal (including fixed penalties) or civil proceedings (including divorce) against me, or in which I become involved in any capacity, and of the outcome;
- if disciplinary proceedings are taken against me by my employer or by a professional body or association;
- if I become bankrupt or involved in any other financial difficulties or if a Company, of which I am a Director, goes into liquidation;
- if a close relative (as defined in the Notes for Guidance) is involved in any criminal or civil proceedings and of the outcome;
- if I or a close relative (as defined in the Notes for Guidance) join the Police Force as a police officer or civilian or become a special constable, traffic warden, an employee of the Crown Prosecution Service, Probation Service or Prison Service;
- if I become or cease to be a Freemason;
- if I accept any position or Office which would have disqualified me from appointment.

SECTION 3

I undertake to comply with:

- any directions in relation to my sitting as a Magistrate, including suspension of refraining from sitting as a Magistrate made by the Lord Chancellor or on his behalf.

SECTION 4 (you MUST complete this section fully)

I declare that:

Please initial, on the dotted line after either A or B, the statement which applies to you.

A.....I have not been convicted of any offence, including motoring offences nor formally cautioned. No order of a court, either criminal or civil, has been made against me. I am not involved in any matter pending before a court.

B.....The details below provide particulars of every conviction or formal caution and order (whether civil or criminal), and any details of matters pending before a court (including divorce proceedings):

I have carefully read this form. I understand its contents and signify my assent.

Signed:

Date:

ANNEX B

TIMETABLE FOR CONDUCT AND DISCIPLINARY MATTERS

Failure to comply with time limits

Regulation 6(1) and (2) of the Regulations provides:

6. —(1) This regulation applies where any person who has been invited to make representations to a person exercising functions under these regulations or under rules made under these regulations has not complied with the relevant time limit for doing so.

(2) The person exercising the functions may—

- (a) continue to deal with the case,
- (b) treat representations made outside the relevant time limit as if they had not been made,
- (c) complete any report,
- (d) recommend the dismissal of the case or the ending of an investigation or a review, or
- (e) where the regulations or rules made under them specifically permit, dismiss the case.

Failure to comply with the time limits set out in these rules may therefore result in one of the above actions taking place.

For ease of reference a summary of the time limits set out in the Complaints (Magistrates) Rules 2008 is set out below. This summary does not however form part of the rules nor create any additional obligations not already set out in those rules.

Time limit for making complaints

Regulation 4 requires a complaint to be made within 12 months of the event (or the end of a state of affairs) complained of (see Rule 6).

Stage 1: Deciding where the complaint should be handled

The Chairman of the Advisory Committee should decide who will handle the complaint and pass it to the relevant person within 3 days of receipt (see rule 16).

Stage 2: Initial consideration of a case

A decision on whether the complaint can be investigated must be made within 7 business days of the decision in rule 16 (see rule 23).

If the complaint is to be dealt with by the Advisory Committee, the Magistrate must be provided with details of the complaint, any supporting papers, a copy of these rules and a copy of section 139 of the Constitutional Reform Act 2005; and asked to supply comments or an explanation in writing within 10 business days of the request (see rule 27).

Stage 3: Starting an investigation

A conduct investigation hearing should take place within 20 business days of receipt of the Magistrate's written comments or explanation (see rule 35(a)).

Where no comments or explanation are received from the Magistrate a conduct investigation hearing should take place within 20 days of the date set for the receipt of comments (see rule 35(b)).

Stage 4: Conduct investigation hearings

Any written evidence that becomes available after the Magistrate was asked for his or her comments or explanation should be copied to him or her as soon as it is received, and no later than 3 business days before the hearing (see rule 43).

The panel should meet immediately after the hearing and complete its report within 3 business days (see rule 60).

The report should be sent to the Magistrate who is the subject of the complaint within 10 business days of the hearing (see rule 59).

Where the panel decide to recommend a disciplinary sanction a copy of the report must also be sent to the OJC and the Advisory Committee Chairman (see rule 71).

Where the panel recommend the dismissal of a complaint a copy of the report should also be sent to the Advisory Committee (see rule 75). If the complaint raises any pastoral or training issues the Advisory Committee should consider whether to refer those issues to the Bench Chairman or BTDC Chairman within 5 business days of receiving the panel's report (see rule 78).

Stage 4A: Conduct panel hearings

The conduct panel's report should be prepared immediately after the conduct hearing (see rule 70).

Where the panel decide to recommend a disciplinary sanction a copy of the report must be sent to the Magistrate, the Advisory Committee Chairman and the OJC (see rule 71).

Stage 5: Action by OJC on receipt of conduct investigation or conduct panel report

The OJC will write to the Magistrate within 5 business days of receipt of the report from the Advisory Committee (see rule 86(a)).

The Magistrate will be asked to provide representations within 10 business days (see rule 86(b)).

If no further enquiries are required, advice will be submitted to the Lord Chancellor and the Lord Chief Justice within 10 business days of receipt of the Magistrate's representations (see rule 90).

If further enquiries are required the OJC will submit advice to the Lord Chancellor and the Lord Chief Justice within 10 business days of the conclusion of those enquiries (see rule 91).

Stage 6: The outcome of the investigation

The Lord Chancellor and the Lord Chief Justice will reach a joint decision on any disciplinary sanction to be applied. The Magistrate will be informed of their decision and advised that he or she has 10 business days in which to apply for a Review Body (see rule 94).

A copy of the decision will also be sent to the relevant Advisory Committee Secretary.

If a Review Body is requested the OJC will advise the Advisory Committee Secretary of the request and the Review Body will be convened and conducted in accordance with the provisions of part 7 of the Regulations.

Stage 7: Implementing the Lord Chancellor's decision and the Lord Chief Justice's decision

Within 3 business days of receipt of the decision of the Lord Chancellor and the Lord Chief Justice the Advisory Committee Secretary must inform all specified persons of the outcome of the case (see rule 97).

ANNEX C

GUIDE TO CONFIDENTIALITY

Section 139 of the Constitutional Reform Act 2005

1. Section 139 of the Constitutional Reform Act prohibits someone who obtains or is given confidential information for the purposes of dealing with judicial complaints and discipline disclosing it except with lawful authority. The information is confidential if it relates to an identified or identifiable individual. It can only be lawfully disclosed if one of the following conditions is met:
 - (a) each person to whom the information relates (this includes the giver of an opinion about another, as well as the person referred to) agrees;
 - (b) the disclosure is for, and is necessary for the exercise of functions under the discipline provisions of the Act, or of section 11(3A) of the Supreme Court Act; or the regulations and rules made under the Constitutional Reform Act; or
 - (c) disclosure is required under rules of court or a court order for the purposes of legal proceedings.

Information about disciplinary action can, however, be disclosed if the Lord Chancellor and the Lord Chief Justice so agree. The section does not prevent the disclosure of information which is already, or has previously been, available to the public from other sources.

2. Information provided during the course of a complaint or conduct investigation should be considered to be confidential to the person who disclosed it (whether the complainant, the Magistrate who is subject to the complaint or a third party) and should be treated as such. Details of how this applies at each stage of the investigation process are set out below. Any queries in relation to specific cases should be addressed to the OJC.

When a complaint is received

3. The complaint will be treated as confidential. The Advisory Committee Chairman (with administrative support from the Secretary to the Advisory Committee) will handle it.

Whilst an investigation is under way

4. The Chairman of the Advisory Committee will provide full details of the complaint to the Magistrate concerned on a confidential basis and to anyone who may be able to assist as a witness or in the investigation process.

5. The Magistrate who is subject to the complaint may show the details to their legal adviser (or any other person assisting them in the matter) and to anyone whom they think would be able to provide material evidence in support. The Magistrate should remind all such persons to treat the complaint as confidential, especially where it contains information about other people.
6. Magistrates should not circulate details of complaints any wider than is necessary.

After an investigation has been completed

7. The Magistrate who is subject to the complaint will be given a copy of the conduct or conduct investigation panel's report and recommendations and any transcript of proceedings.

After the Lord Chancellor and the Lord Chief Justice have reached a decision

8. The OJC will send a copy of the decision to the Secretary to the Advisory Committee who will retain a copy. The secretary will notify the Advisory Committee Chairman, the Bench Chairman, the complainant, the Justices' Clerk and any other relevant person.
9. Where the complaint is in the public domain, or they consider publicity to be in the public interest, the Lord Chancellor and the Lord Chief Justice may also release information to the media. Where practicable, the OJC will alert the Chairman of the Advisory Committee and the Bench Chairman in advance.

ANNEX D

FRAMEWORK FOR THE INITIAL HANDLING OF COMPLAINTS MADE BY MINISTRY OF JUSTICE EMPLOYEES ALLEGING MISCONDUCT BY JUDICIAL OFFICE HOLDERS

INTRODUCTION

1. The Department wishes to encourage and maintain good relations between court or tribunal employees and the judiciary. However, in any organisation it is inevitable that from time to time employees will feel worried or concerned about all sorts of issues. It is important that our culture allows concerns to be raised and, where possible, sorted out at an early stage.
2. Separate grievance procedures are being developed to deal with concerns that employees may wish to raise with the Department against other employees. This framework document recognises the unique working relationship that exists between court and tribunal employees and judicial office holders; it sits outside of the formal complaints process (as well as the formal grievance process) and sets out a procedure that allows employees to raise and resolve any complaints or concerns that they may have about their professional relationship with a judicial office holder.
3. A complaint for the purpose of the framework document is defined as an allegation of misconduct against a judicial office holder.

REMIT OF THIS FRAMEWORK

4. The procedures contained in this framework document only apply where the member of staff is themselves the aggrieved party. They do not apply where a member of staff is simply reporting alleged misconduct by a judicial office holder that has not affected them personally e.g. misuse of judicial status. Such matters will be dealt with under the appropriate complaints procedure

PROCEDURE

5. Staff wishing to make a complaint against a judicial office holder must first raise the matter, in writing, with their Court/Tribunal Manager or other appropriate senior manager ('the manager'). At this point the manager should also consider whether the Whistleblowing policy (set out in the Staff Handbook) is likely to be engaged.
6. If the allegation is so serious that it is deemed to constitute an allegation of a serious criminal offence, the manager should (after obtaining advice as necessary) advise the member of staff to consider bringing the complaint to

7. In all other circumstances, when a Manager receives a written complaint from a member of staff against a judicial office holder they must invite the member of staff to attend a meeting to discuss the complaint as soon as possible.
 - a) At the meeting the manager will explain the options available to them and ask how they would like the issue raised to be resolved.
 - b) The member of staff must take all reasonable steps to attend the meeting and has the right to be accompanied at the meeting by a fellow worker or a trade union official.
8. If after this meeting, the complaint is to be taken further, the manager must immediately inform the subject of the complaint and the appropriate senior judicial office holder¹ of the existence of the complaint. The manager must also convene a meeting (the options meeting) with that senior judicial office holder to discuss the issues raised and to consider whether any local resolution of the matter might be possible.
9. The options meeting should be held within 7 business days of the meeting with the member of staff. The senior judicial office holder should discuss the complaint with the judicial office holder who is the subject of the complaint before the options meeting and seek their comments².

The Options Meeting

10. At the options meeting, the manager and the senior judicial office holder will determine the appropriate next steps needed to resolve the issues raised. The following options should be considered:
 - a) No further Action;
 - b) Informal action by the manager or senior judicial office holder;
 - c) Mediation;
 - d) Formal complaint procedures;
 - e) Police investigation where the allegations refer to criminal activity.
11. The manager should keep a record of all decisions made and the reasons for those decisions.

¹ Advice as to the appropriate senior judicial office can be obtained from Judicial Office (020 7073 1611) or Tribunal Judicial Office.

² In the case of magistrates the Bench Chair should always be accompanied by the Bench Legal Manager or Justices' Clerk at this meeting.

No Further Action

12. Where the manager and senior judicial office holder determine, having considered all the information (including any written comments from the judicial office holder) that the complaint is misconceived (e.g. because of a misunderstanding of court procedures) the manager should meet the member of staff to explain why no further action is being taken and provide them with a copy of that explanation in writing.
13. No formal record of the allegation will be placed on the judicial office holder's personal file.

Informal action

14. If it is decided at the options meeting that the issue should be dealt with by the senior judicial office holder on a pastoral basis the manager should inform the member of staff of the decision and provide them with a copy of the explanation in writing within 5 business days of the meeting.
15. The senior judicial office holder should inform the judicial office holder of the decision to deal with the issue pastorally and provide them with reasons for the decision within 5 business days.³
16. No formal record of the allegation will be placed on the judicial office holder's personal file.

Mediation

17. If it is decided at the option meeting that the issue is one that might be resolved by way of mediation, the manager and senior judicial office holder must seek the agreement of the member of staff and the judicial office holder who is the subject of the complaint, to such an initiative within five days of their initial options meeting taking place.
18. If both parties agree to mediation the manager will inform HMCS/Tribunals HR in order to identify a suitably trained mediator.
19. Every effort should be made to ensure that appropriate mediators are identified within 20 business days of the requests being made.
20. The mediation process is confidential and no formal record of the complaint will be placed on the judicial office holder's personal file.

The formal complaints procedure

³ Detailed guidance to senior judicial office holders on dealing with pastoral matters is attached at Annex B *(note that this Annex has not been attached to the Complaints (Magistrates) Rules 2008).

21. Where informal handling or mediation is not deemed to be appropriate or the option of mediation was either not agreed by the parties or was unsuccessful, the manager and the senior judicial office holder must inform the relevant Human Resources Department about the complaint and send the complaint:
 - in the case of a Magistrate to the relevant Advisory Committee Chair;
 - in the case of a Tribunal member to the relevant Tribunal President and
 - in respect of all other judicial office holders to the Office for Judicial Complaints.
22. Within five business days of receipt of the papers the OJC, Advisory Committee Chair or Tribunal President, as appropriate, will confirm with the parties they have been given the opportunity to resolve the complaint informally or that they have been informed why informal resolution was deemed to be inappropriate.
23. Once the OJC, Advisory Committee Chair or Tribunal President as appropriate is satisfied that the parties do not wish to resolve the issue informally they must proceed to handle the complaint in accordance with the procedures for the relevant type of judicial office holder contained within the Judicial Discipline (Prescribed Procedures) Regulations 2006, the Complaints (Magistrates) Rules 2006 or the Tribunal Complaints Rules 2006.

Criminal Investigations

24. If after the options meeting the allegation is considered so serious as to constitute a potential criminal offence, the manager (after obtaining advice as necessary) should advise the member of staff to bring the allegation to the attention of the police. In such situations no further internal consideration or preliminary evidence gathering of any kind should take place.
25. The issue of suspension of the judicial office holder should always be considered when a criminal offence is alleged. Only the Lord Chief Justice can suspend a judicial office holder; however, the senior judicial office should advise the judicial office holder to consider refraining from sitting and submit a report immediately via the OJC to the Lord Chief Justice for consideration of suspension.

Enquiries

26. Advice on the operation of these procedures or any other related matter can be sought from:
 - a) The Office for Judicial Complaints enquiry number 020 3334 2555 in respect of enquiries about these procedures;
 - b) Human Resources telephone numbers in respect of staff issues;

N East, N West, S East
Tel: 0113 284 7991

Midlands, Wales, S West & Outer London
Tel: 0113 284 7992

Central London & HQ
Tel: 0113 284 7993

- c) Judicial Office telephone number telephone number 020 7073 1611 in respect of issues affecting judicial office holders (including Magistrates);
- d) Tribunal Judicial Office telephone number in respect of issues affecting tribunal office holders.

ANNEX E

ALLEGATIONS OF LACK OF COMPETENCE

Procedure

1. The assessment of competence in Magistrates is a matter for Bench Training and Development Committees (“BTDCs”).
2. Where a BTDC has concluded that a Magistrate has failed, over a period of time, to reach the required standard so as to call into question his or her capabilities to remain a Magistrate, it will instruct the Justices’ Clerk to report the matter to the Advisory Committee.
3. The Justices’ Clerk’s report should take the form of a letter with supporting documentation that must include the appraiser’s report.
4. Once a report is received from the Justices’ Clerk the Advisory Committee must:
 - (a) satisfy itself that any review procedure has been properly followed;
 - (b) if so satisfied, make a formal recommendation for removal to the OJC for consideration by the Lord Chancellor and the Lord Chief Justice; or
 - (c) if not satisfied, refer the report back to the Justices’ Clerk with appropriate instructions for the BTDC.*
5. The Advisory Committee must not concern itself with the substance of the decision reached by the BTDC; its task is to ensure proper procedures have been followed
6. The Advisory Committee should reach a decision under paragraph 4 within 5 business days of receiving the Justices’ Clerk’s report.

ANNEX F

Advisory Committee Quarterly Return Form



Magistrates Advisory Committee - Quarterly Complaint Statistics

Advisory Committee:

Reporting Period:

	Source of Complaint*	Nature of Complaint**	Date Received	If Complaint is Dismissed Please Provide Reason
Number of Complaints Received				
Name of Magistrate				
Name of Magistrate				
Name of Magistrate				
Number of Complaints Dismissed				
Name of Magistrate				
Name of Magistrate				
Name of Magistrate				
Number of Panel Investigations Commenced				
Name of Magistrate				
Name of Magistrate				
Name of Magistrate				

- * Member of the public, court staff, magistrate etc...
- ** Motoring offence, events in court, poor sittings record etc...
- *** Unsubstantiated, vexatious etc...

Magistrates (Complaints) Rules 2008 – Supplementary Guidance

R5(b): A copy of this Framework is attached at Annex D. The Framework applies only to complaints where the aggrieved member of staff is the subject of the alleged misconduct. Where the staff member is simply reporting alleged misconduct by a Magistrate e.g. misuse of judicial status or an inappropriate remark directed to a member of the public in court, the complaint should be dealt with in accordance with these rules.

R6: The Advisory Committee should disregard the forwarding period when calculating whether or not the complaint is made within time, where it is satisfied that it was reasonable for a complainant who had not appreciated the terms of rule 13 to send the complaint to the original recipient.

R9: JACO has the power to investigate complaints about undue delay in the handling of complaints by Advisory Committees.

R13: When the Chairman of the Advisory Committee receives a complaint in the first instance he or she is responsible for deciding whether the complaint should be dealt with by the Advisory Committee, or sent to the relevant Bench Chairman because it relates to a pastoral issue. He or she may, however, wish to consult the Bench Chairman and the Advisory Committee Secretary before making a decision (the role of the Bench Chairman in relation to training and pastoral issues is detailed in “Directions to Bench Chairmen” copies of which are available from Judicial Office). When a Bench Chairman receives a complaint, in the first instance he or she must decide whether the complaint relates to a pastoral or training issue or a conduct issue. If he or she determines that the complaint refers to a conduct issue he or she must transfer the case to the Chairman of the Advisory Committee. The Bench Chairman may, however, wish to consult with the Justices’ Clerk and/or the Chairman of the Advisory Committee before making a decision. Where an Advisory Committee receives a complaint relating solely to the competence of a Magistrate, it should refer it to the BTDC. Where a complaint raises issues of both conduct and competence, the Advisory Committee should proceed to determine the issue of conduct, prior to the BTDC considering the competence issues. If there are any doubts as to whether the complaint raises questions of misconduct, the Chairman or Advisory Committee Secretary should consult the OJC.

R14: Where someone who wishes to make a complaint first raises it by speaking to the Advisory Committee Secretary (or any other person) the complainant should be told to put it in writing before it can be looked into further. Special arrangements may, however, be made for anyone who cannot write down a complaint, for example because of language difficulties or disability. All complaints must include specific details of the grounds for the complaint.

R15: This is only a decision on where the complaint should be handled not on how it should be handled.

R17: Advisory Committees can rely on this rule where matters that are capable of amounting to misconduct come to the attention of the Advisory Committee e.g. from a court record revealing an undisclosed criminal conviction, a newspaper article or as a result of enquiries into a related matter. Advisory Committees should not embark on an investigation without a complainant in circumstances where a ‘potential’ complainant makes an allegation that they do not wish to pursue.

R18(b): Although the Chairman can perform these functions on his own, all correspondence should be sent via the Advisory Committee Secretary.

R19: When considering whether the complaint is one which can be investigated, the Advisory Committee should start by ascertaining the facts of the case, including, where relevant, details of any conviction or police caution.

R20: When considering whether the complaint is one which can be investigated, the Advisory Committee should start by ascertaining the facts of the case, including, where relevant, details of any conviction or police caution.

If the complaint is about a judicial office holder other than a magistrate then Advisory Committees should refer it to the OJC.

A vexatious complaint is one which can be shown to have been instituted maliciously and without reasonable cause or one which is brought for an ulterior purpose (eg to cause inconvenience or to harass).

R25: Unless there is evidence to suggest otherwise, it is assumed that submission of a complaint implies consent to disclose it to the Magistrate.

R29(d): The procedure for conducting conduct investigation panels is contained in rules 36-62 & 69-73. The procedure for conducting conduct panels is contained in rules 63-68 & 69-73. A conduct panel can only be convened where the Magistrate accepts the conduct alleged in its entirety. If there are any issues of fact to be determined a conduct investigation panel should be convened.

R31(b): In some cases it may be appropriate for the Magistrate to abstain from sitting, or discharging any other magisterial duty, until the complaint has been resolved. Where the Advisory Committee considers it is possible that the circumstances of the complaint might give rise to a risk of the Magistracy being brought into disrepute or the Magistrate's own integrity, authority or standing being called into question if he or she sat whilst the matter was outstanding, it should report the matter to the Bench Chairman, who will discuss it with the Magistrate concerned, and seek the Magistrate's agreement to refrain from sitting voluntarily until the complaint has been completed. If the Magistrate does not agree to refrain from sitting voluntarily the Advisory Committee Chairman should consider whether the matter should be reported to the Lord Chief Justice for his consideration as to whether to suspend the Magistrate in accordance with section 108 of the Act and regulation 39 of the Regulations. In such cases, the Advisory Committee Chairman should consult the Advisory Committee Secretary, the Bench Chairman and the Justices' Clerk. It may also be appropriate for a Magistrate to abstain from duties where he or she has failed to provide written comments, agree a hearing date or attend a hearing. Under no circumstances should action be taken which might reasonably be thought to pre-empt the eventual outcome. For example, nothing must be said which might appear to suggest the Magistrate should resign before the Lord Chancellor and the Lord Chief Justice reach a decision. For the avoidance of doubt the Lord Chief Justice may, with the concurrence of the Lord Chancellor, suspend a Magistrate from sitting independently of any consideration by the Advisory Committee.

R32: The panel should normally consist of: 1) A Chairman who may be the Chairman of the Advisory Committee or the Chairman's nominee, who must be a member of the Advisory Committee; 2) At least one member from a different bench; 3) One member who is a non-Magistrate member of the Advisory Committee; 4) Where an Advisory Committee covers a single local justice area, one Magistrate member must be drawn from a neighbouring Advisory Committee. In exceptional circumstances, e.g. where there is a potential conflict of interest, where the Advisory Committee has raised the complaint or where Advisory Committee members are party to the complaint, it may be appropriate for the investigation to be conducted by a panel from a different Advisory Committee. Advice may be obtained from the OJC on when a transfer may be appropriate. The OJC can also assist with locating a suitable alternative Advisory Committee. If it is necessary to transfer a case to a different Advisory Committee, the Secretary should write to the parties to the complaint and the Bench Chairman to inform them of the decision to transfer and the date of transfer. Once the case has been transferred the Secretary of the new Advisory Committee should contact the parties and thereafter provide updates to the parties to the complaint on the progress of the case.

R33(a): Where delays are likely to occur because insufficient members of the local Advisory Committee or Sub-Committees are available to sit on a panel within this time limit, the Chairman should consider asking for assistance from a neighbouring Committee.

R33(b): Conduct panels are only appropriate when the Magistrate has accepted the allegation. Therefore if no comments are received from the Magistrate a conduct investigation panel should be convened.

R34: There will be occasions when the Advisory Committee Secretary feels that there is conflict between his or her day to day role (e.g. as Justices' Clerk) and providing support to a particular investigation. In such an instance, it would be appropriate to arrange for either a Sub-Committee Secretary or a Secretary to a neighbouring Advisory Committee to take on the task. It is important to take all reasonable steps to avoid allegations arising from a perception that the panel's inquiry and conclusions have been influenced by reason of any conflict of interest on the part of the Secretary. It may also be appropriate to seek assistance from either a Sub-Committee Secretary or a Secretary to a neighbouring Advisory Committee where the Secretary is not available to provide administrative support within the time limit.

R35: The Secretary should inform the parties to the complaint and the Bench Chairman of relevant decisions as they occur, and in any event, provide updates at monthly intervals.

R37: Such statements may be received at any time before the hearing.

R38(b): In cases determined by the Lord Chancellor and the Lord Chief Justice after 3 April 2006, the Magistrate will have been notified under regulation 27 if the case is to be recorded in a form which may be referred to in future disciplinary proceedings. In cases before this date, reference should only be made to cases which the Lord Chancellor had found to be substantiated, in whole or in part. The Magistrate's representations should generally be limited to the accuracy of the records, because he or she will if necessary be given the opportunity to comment on the relevance of such past matters to a current case at a later stage (i.e. if the Advisory Committee finds the complaint substantiated in whole or in part or the Lord Chancellor and the Lord Chief Justice propose that disciplinary action should be taken).

R40: See guidance on rule 31 above.

R44: What will amount to a full and accurate note may vary according to the facilities available to the Advisory Committee and the circumstances of the complaint.

There is no requirement for evidence to be given under oath.

R52(a): The Chairman should ensure that a balance is struck between avoiding repetition and ensuring that the Magistrate feels that he or she has been afforded a full opportunity to present his or her views.

R58(b): It is essential that reports are written within 3 business days of the hearing, while matters are still fresh in the minds of the conduct investigation panel. It is appreciated, however, that in some circumstances it may be necessary to refer to the full agreed note (for accuracy reasons) before sending a copy of the report to the Magistrate.

R59: The discussion should begin by identifying the facts not in dispute. The disputed facts should then be isolated and the evidence in support and against them should be carefully weighed. The panel should decide, if possible, which version of the disputed facts they feel is best supported, noting the reasons.

R60: In formulating its recommendations the conduct investigation panel must bear in mind the sanctions available to the Lord Chancellor and the Lord Chief Justice and the fact that the Lord Chancellor and the Lord Chief Justice will have full regard to the independence of the judiciary when determining a complaint. The Lord Chancellor will not remove a Magistrate (with the Lord Chief Justice's agreement) unless he considers there is no acceptable alternative. In making their recommendation, a conduct

investigation panel should therefore have regard to *all* of the Lord Chancellor's and the Lord Chief Justice's powers, including the options of requiring a Magistrate to receive further training, mentoring and/or appraisal through the relevant local arrangements. If the panel proposes to recommend such action, they should consider whether or not to recommend that the Magistrate should be suspended until training, mentoring and/or appraisal has been completed. The Chairman or Secretary should also discuss any training or mentoring proposals with the Justices' Clerk or Chairman of the BTDC (see also guidance to rule 75).

R63: Conduct panels can only be convened in the circumstances detailed in rule 29(d). The Magistrate should be invited to comment on the accuracy and relevance of any records that may be taken into account by the conduct panel.

R67: In formulating its recommendations the conduct panel must bear in mind the sanctions available to the Lord Chancellor and the Lord Chief Justice and the fact that the Lord Chancellor and the Lord Chief Justice will have full regard to the independence of the judiciary when determining a complaint. The Lord Chancellor will not remove a Magistrate (with the Lord Chief Justice's agreement) unless he considers there is no acceptable alternative. In making their recommendation, a conduct panel should, therefore, have regard to *all* of the Lord Chancellor's and the Lord Chief Justice's powers, including the options of requiring a Magistrate to receive further training, mentoring and/or appraisal through the relevant local arrangements. If the panel proposes to recommend such action, they should consider whether or not to recommend that the Magistrate should be suspended until training, mentoring and/or appraisal has been completed. The Chairman or Secretary should also discuss any training or mentoring proposals with the Justices' Clerk or Chairman of the BTDC (see also guidance to rule 75).

The copy of the report sent to the OJC and the Advisory Committee Chairman must be accompanied by a copy of:

- (a) The complaint;
- (b) The Magistrate's response;
- (c) Any other written evidence considered by the panel; and

A full and accurate note of the panel hearing.

R72: It is advisable when writing to the complainant to advise him or her of the confidentiality requirements.

R73(c): Details of dismissed cases must also be sent to the OJC twice a year (see reporting of Statistics on complaints at Annex F).

R74(b): It is advisable to use the standard paragraphs below:

"If you feel that we have not handled this complaint/matter* properly, you can complain to the Judicial Appointments and Conduct Ombudsman, Sir John Brigstocke KCB. Please note that the Ombudsman can only consider a complaint about the handling of this complaint/matter*. He has no power to investigate the conduct issue itself.

The Ombudsman will be able to investigate your complaint about the handling of this complaint/matter* if you write to him within 28 days of notification of our decision. After that period, he will consider whether it is appropriate to investigate it. Further information about the Ombudsman and his remit for investigations can be found at www.judicialombudsman.gov.uk. The Office of the Judicial Appointments and Conduct Ombudsman can be contacted in writing

at 9th Floor, The Tower, 102 Petty France, London, SW1H 9AJ, by e-mail at headoffice@jaco.gsi.gov.uk or by telephone on 020 3334 2913.”

*delete as appropriate

R75(a): When considering whether to recommend that a Magistrate should receive further training and/or coaching, the Advisory Committee must:

- make a realistic assessment, in consultation with the BTDC, as to whether training and/or coaching is likely to deliver the required changes to behavior;
- ensure that any recommendation is in accordance with the nationally agreed competence framework for the Magistrates’ appraisal and training scheme;
- establish whether the BTDC has the resources and/or capacity to deliver the proposed training and/or coaching and, if the BTDC does not, to record this in the recommendation.

It should also be borne in mind that the Lord Chief Justice may seek advice from the Judicial Studies Board (JSB) prior to agreeing any recommendation for training and/or coaching, and therefore Advisory Committees may also wish to seek advice from the JSB before submitting the recommendation to the OJC.