

Version in force from 28th August 2008. This document shows the Judicial Discipline (Prescribed Procedures) Regulations 2006 S.I. 2006/676, as amended by the Judicial Discipline (Prescribed Procedures) (Amendment) Regulations 2008 S.I. 2008/2098. It has been produced by the Office for Judicial Complaints in order to assist users but its accuracy is not guaranteed. For a definitive version of the Regulations, users should refer to the original statutory instruments.

The Judicial Discipline (Prescribed Procedures) Regulations 2006 (as amended)

PART 1

INTRODUCTORY

Citation and commencement

1. These regulations may be cited as the Judicial Discipline (Prescribed Procedures) Regulations 2006 and shall come into force on 3rd April 2006.

Interpretation

2. (1) In these Regulations—

“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;

“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 made under regulations 8, 9 or 10 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 person from an office listed in Schedule 14 to the Act; the exercise by the Lord Chief Justice of his powers under section 108(3), (4)(b) and (c) and (5) of the Act; or a decision to move an Address for the removal of a senior judge by both Houses of Parliament;

“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;

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

“President” in relation to a tribunal means a President or other judicial office holder with disciplinary responsibility for tribunal members and includes any judicial office holder designated to exercise such disciplinary responsibility under rules made under regulation 10;

“the subject of the disciplinary proceedings” means the judicial office holder whose conduct is being considered in accordance with these regulations.

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

(a) in relation to a judicial 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 a judicial 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.

Office for Judicial Complaints

3. (1) The Lord Chancellor shall, with the agreement of the Lord Chief Justice, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland, designate officials for the purpose of performing functions under these regulations.

- (2) Officials designated by the Lord Chancellor under paragraph (1) shall be known collectively as the Office for Judicial Complaints.
- (3) The Office for Judicial Complaints may undertake such enquiries as are necessary for it to perform its functions under these regulations.
- (4) Any reply by a complainant or the subject of the disciplinary proceedings to a request made by the Office for Judicial Complaints pursuant to enquiries made under paragraph (3) must be made within twenty business days of that request.

Time limits within which a complaint must be made

4. (1) A complaint must be made within twelve months of the event or matter complained of.
- (2) But a complaint relating to a continuing state of affairs may be made at any time while that state of affairs continues or within twelve months from when it ends.
- (3) Subject to regulation 5, an advisory committee, a President or the Office for Judicial Complaints must dismiss a complaint without further investigation if the complaint is made outside the time limits set out at paragraphs (1) and (2).

Extension of time limits

5. (1) The Office for Judicial Complaints, an advisory committee, a President, an investigating judge or a review body, as the case may be, may extend a time limit under these regulations, whether or not the time limit has expired, where there is good reason to do so.
- (2) A person who is refused an extension of a time limit under paragraph (1) may make representations to the Office for Judicial Complaints asking it to refer the request for an extension to the Lord Chancellor or to the Lord Chief Justice.
- (3) The person must make such representations within ten business days of being notified of the refusal.
- (4) The Lord Chancellor or the Lord Chief Justice may extend a time limit under these regulations, whether or not the time limit has expired, where there is good reason to do so.

Failure to comply with time limits

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.
- (3) But a review body may only recommend ending a review under paragraph 2(d) where the case was referred to it under regulation 29(1)(d).

Measurement of time for doing an act

7. In these regulations the time for doing any act in response to a notification, invitation or request made under the regulations runs from the second business day after the 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.

PART 2

COMPLAINTS AND REFERRALS

Complaints made to the Office for Judicial Complaints

8. Subject to regulations 9 and 10, a complaint must be made to the Office for Judicial Complaints.

Complaints made to advisory committees

9. (1) A complaint about a justice of the peace must be made in accordance with rules made under paragraph (2) to the advisory committee for the local justice area to which the justice of the peace is assigned under section 10(2) of the Courts Act 2003.
- (1A) Where an advisory committee receives no complaint under these Regulations or under rules made under paragraph (2), but it receives information from any source which suggests

- to it that disciplinary proceedings might be justified, it may treat that information as if it were a complaint made under these Regulations, or under rules made under paragraph (2).
- (2) The Lord Chief Justice shall, with the agreement of the Lord Chancellor, make rules for dealing with complaints about justices of the peace.
- (3) Where an advisory committee sends a case to the Office for Judicial Complaints in accordance with rules made under paragraph (2), it will be dealt with under regulation 19.
- (4) The Lord Chancellor and the Lord Chief Justice, or either of them, may determine that a complaint which has been dismissed by an advisory committee or which the advisory committee is minded to dismiss shall nevertheless be subject to further consideration under the rules and these regulations where the complaint concerns misconduct and is sufficiently serious for further consideration to be necessary.
- (5) Where there has been a determination under the previous paragraph, the case must be sent to the advisory committee for further consideration.

Complaints made in relation to tribunals

- 10.** (1) A complaint about a relevant tribunal member, other than a President, must be made to the President of the tribunal concerned in accordance with rules made under paragraph (2).
- (2) The Lord Chief Justice, with the agreement of the Lord Chancellor, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland, shall make rules dealing with complaints about tribunal members.
- (3) A relevant tribunal member for the purposes of paragraph (1) is a tribunal member to whom rules made under paragraph (2) apply.
- (3A) Where a President receives no complaint under these Regulations or under rules made under paragraph (2), but instead receives information from any source which suggests that disciplinary proceedings might be justified, that President may treat that information as if it were a complaint made under these Regulations, or under rules made under paragraph (2).
- (4) Where a President sends a case to the Office for Judicial Complaints in accordance with rules made under paragraph (2), it shall be dealt with under regulation 19.
- (5) Where, under rules made under paragraph (2), a President has upheld a case and he has decided to keep a record of the case in a form which may be referred to in future disciplinary proceedings, he must notify the tribunal member.

- (6) The tribunal member may make representations to the Lord Chancellor and the Lord Chief Justice within ten business days of the notification by the President.
- (7) After considering any representations under the previous paragraph and any advice from the President, the Lord Chancellor or the Lord Chief Justice may decide to appoint an investigating judge if he considers that the case is sufficiently serious or complex enough to require judicial investigation.
- (8) Where an investigating judge is not appointed under the previous paragraph, the Lord Chancellor and the Lord Chief Justice shall deal with the case under Part 6.
- (9) The Lord Chancellor and the Lord Chief Justice, or either of them, may determine that a complaint which has been dismissed by a President or which the President is minded to dismiss shall nevertheless be subject to further consideration under the rules and these regulations where the complaint concerns misconduct and is sufficiently serious for further consideration to be necessary.
- (10) Where there has been a determination under the previous paragraph, the case must be sent to the President for further consideration.

Form of a complaint

11. A complaint to the Office for Judicial Complaints, an advisory committee or a President must be made in writing, unless the Office for Judicial Complaints, the advisory committee or the President considers that in the circumstances it is reasonable to accept a complaint in another form.

Withdrawal of complaint

- 12.** (1) The complainant may withdraw a complaint at any time.
- (2) A complaint must be treated as withdrawn if the complainant indicates that he does not want the complaint or any further information which he has provided to be disclosed to the subject of the disciplinary proceedings.
- (3) If a complaint is withdrawn or treated as withdrawn at any time, but the Lord Chancellor or the Lord Chief Justice considers that the matters which it raised are sufficiently serious for further consideration to be necessary, he may direct that the complaint shall be considered further under these regulations or under rules made under these Regulations.

Referral of other information for consideration

- 13.** (1) Where no complaint is being considered under these regulations or under rules made under these regulations, but the Lord Chancellor or the Lord Chief Justice receives information from any source which suggests to him that disciplinary proceedings might be justified, he may refer that information to the Office for Judicial Complaints to be dealt with under these regulations, or to an advisory committee or President, as the case may be, to be dealt with in accordance with their rules.
- (2) The Office for Judicial Complaints must, after making any enquiries which it thinks necessary, refer the case to the nominated judge in accordance with regulation 16.

PART 3

CONSIDERATION BY THE OFFICE FOR JUDICIAL COMPLAINTS AND THE NOMINATED JUDGE

Consideration of a complaint by the Office for Judicial Complaints

- 14.** (1) The Office for Judicial Complaints must dismiss a complaint, or part of a complaint, if it falls into any of the following categories—
- (a) it does not adequately particularise the matter complained of;
 - (b) it is about a judicial decision or judicial case management, and raises no question of misconduct;
 - (c) the action complained of was not done or caused to be done by a judicial office holder;
 - (d) it is vexatious;
 - (e) it is without substance or, even if substantiated, would not require any disciplinary action to be taken;
 - (f) it is untrue, mistaken or misconceived;
 - (g) it raises a matter which has already been dealt with, whether under these regulations or otherwise, and does not present any material new evidence;
 - (h) it is about a person who no longer holds any judicial office;
 - (i) it is about the private life of a judicial office holder and could not reasonably be considered to affect his suitability to hold judicial office;

- (j) it is about the professional conduct in a non-judicial capacity of a judicial office holder and could not reasonably be considered to affect his suitability to hold judicial office;
 - (k) for any other reason it does not relate to misconduct by a judicial office holder.
- (2) The Office for Judicial Complaints may not dismiss a complaint under paragraph (1)(a) unless it has given the complainant a reasonable opportunity to provide adequate particulars of the complaint.
- (3) Where an account of facts given by a complainant differs from an account given by the judicial office holder about whom the complaint is made, the Office for Judicial Complaints must consult any independent evidence which exists which may verify the facts in dispute before it dismisses a complaint under paragraph (1), unless to do so would be disproportionate in all the circumstances.

Further consideration of a complaint liable to be dismissed under regulation 14

15. But the Lord Chancellor and the Lord Chief Justice, or either of them, may determine that a complaint which has been dismissed by the Office for Judicial Complaints or which the Office for Judicial Complaints is minded to dismiss under regulation 14(1) shall nevertheless be subject to further consideration under these regulations where the complaint concerns misconduct and is sufficiently serious for further consideration to be necessary.

Referral to nominated judge

- 16.** The Office for Judicial Complaints must refer the case to a nominated judge where—
- (a) a complaint has not been dismissed by the Office for Judicial Complaints under regulations 4 or 14;
 - (b) it is a referral under regulation 13; or
 - (c) the Lord Chancellor or the Lord Chief Justice has determined under regulation 15 that further consideration of the case is necessary.

Nomination of nominated judge

- 17.** (1) A nominated judge shall be a judicial office holder who is nominated by the Lord Chief Justice with the agreement of the Lord Chancellor.
- (2) The Lord Chief Justice may nominate a different judicial office holder to deal with different cases, or to deal with different aspects of the same case.

(3) In a particular case, a nominated judge must be of at least the same judicial rank as the subject of the disciplinary proceedings.

Functions of nominated judge

18. A nominated judge shall advise the Lord Chancellor and the Lord Chief Justice—

- (a) whether the case should be dismissed with no further action;
- (b) whether a judicial investigation is required; and if so, how the investigation should be carried out; and what matters should be considered in that investigation;
- (c) whether disciplinary action should be taken without further investigation and, if so, what disciplinary action should be taken;
- (d) whether, in addition to or without a judicial investigation, some other action should be taken; and
- (e) whether the request made under regulation 29(2) by the subject of the disciplinary proceedings is totally without merit.

PART 4

CONSIDERATION BY THE LORD CHANCELLOR AND THE LORD CHIEF JUSTICE

Consideration by the Lord Chancellor and the Lord Chief Justice

19. (1) The Lord Chancellor or the Lord Chief Justice may, after considering any advice from a nominated judge, an advisory committee or a President, decide to appoint an investigating judge if he considers that the case is sufficiently serious or complex to require judicial investigation.

(2) Where an investigating judge is not appointed under paragraph (1), the Lord Chancellor and the Lord Chief Justice shall, after considering any advice from a nominated judge, an advisory committee or a President, deal with the case under Part 6.

PART 5

JUDICIAL INVESTIGATION

Nomination of investigating judge

- 20.** (1) When a case is to be subject to judicial investigation, the Lord Chief Justice with the agreement of the Lord Chancellor shall nominate a judicial office holder or a former judicial office holder to be the investigating judge.
- (2) The investigating judge must be of a higher judicial rank than the subject of the disciplinary proceedings.
- (3) In relation to a former judicial office holder, reference to his judicial rank means the rank he held immediately before he ceased to hold judicial office.

Terms of reference of investigating judge

- 21.** (1) The terms of reference for the investigation by the investigating judge shall be such as the Lord Chancellor and the Lord Chief Justice may agree.
- (2) The investigating judge may ask the Lord Chancellor and the Lord Chief Justice to amend his terms of reference.
- (3) Any changes to the terms of reference shall be such as the Lord Chancellor and the Lord Chief Justice may agree.

Functions of investigating judge

- 22.** (1) The investigating judge must advise the Lord Chancellor and the Lord Chief Justice—
- (a) as to the facts of a case;
 - (b) whether the case is substantiated or not;
 - (c) whether disciplinary action should be taken; and if so what disciplinary action should be taken; and
 - (d) as to any other matters in the terms of reference.
- (2) Where it falls to the investigating judge to establish any fact, any question as to whether that fact is established must be decided on the balance of probabilities.

Procedure of investigation by investigating judge

- 23.** (1) The investigating judge must—
- (a) decide how to conduct the investigation;
 - (b) notify the subject of the disciplinary proceedings and any complainant of the proposals for the conduct of the investigation, and whether oral evidence will be taken;

- (c) invite the subject of the disciplinary proceedings to give evidence and make representations about the procedure adopted and the case; and
 - (d) record any representations on the proposals which those persons may make.
- (2) The investigating judge may invite the complainant or any person who may be able to assist the investigation to give evidence about the case.
 - (3) Any evidence or representations from the complainant or the subject of the disciplinary proceedings must be provided to the investigating judge within ten business days of an invitation under paragraphs (1) or (2).
 - (4) The investigating judge may take oral evidence if it is considered necessary to do so.
 - (5) The investigating judge must arrange for any evidence given orally to be recorded in a transcript or a tape recording.
 - (6) The investigating judge must disclose any evidence obtained under paragraph (2) to the subject of the disciplinary proceedings and must invite that person to make representations on the evidence.
 - (7) The subject of the disciplinary proceedings must make any representations under paragraph (6) within ten business days of the invitation under that paragraph.
 - (8) Where the investigating judge considers that it is necessary to disclose evidence obtained during the course of an investigation to any person other than the subject of the disciplinary proceedings, the investigating judge must first invite—
 - (a) the person who provided the evidence, and
 - (b) the subject of the disciplinary proceedingsto make representations about the proposed disclosure.
 - (9) The person who provided the evidence, and the subject of the disciplinary proceedings, must make any representations under paragraph (8) within ten business days of the invitation.

Report of investigating judge

- 25.** (1) Subject to his terms of reference, the investigating judge may decide the form and content of his report.
- (2) The investigating judge must disclose a draft of his report to the subject of the disciplinary proceedings and invite him to make representations about it.

- (3) The investigating judge must disclose a draft of his report to any complainant and invite him to make representations about it.
- (4) The investigating judge may show a draft of his report to any other person, and invite him to make representations about it.
- (5) Disclosure of the draft report under paragraphs (3) or (4)—
- (a) may be of the whole or part,
 - (b) may be in the form of a summary, and
 - (c) must omit any information the disclosure of which is prohibited under section 139 of the Act.
- (6) Any representations must be provided to the investigating judge within ten business days of disclosure of the draft report under paragraphs (2) or (3).
- (7) After considering any representations made in accordance with paragraphs (2) to (4) and (6) the investigating judge must—
- (a) complete his report and submit it to the Lord Chancellor and the Lord Chief Justice, with details of any requested changes which he has not made;
 - (b) send a copy of his report to the subject of the disciplinary proceedings; and
 - (c) send a copy of his report or the relevant part of his report to any other person who has been invited to make representations about the draft report, but omitting any material the disclosure of which is prohibited under section 139 of the Act.

PART 6

PROPOSED DISCIPLINARY ACTION, NOTIFICATION AND FINAL DECISION

Decisions and proposed disciplinary action

- 26.** (1) Where they have considered advice from a nominated judge, the report of an advisory committee or a President under regulation 19 or the report of an investigating judge under Part 5, the Lord Chancellor and the Lord Chief Justice may agree that—
- (a) the case is unsubstantiated and is dismissed;
 - (b) the case is substantiated wholly or in part, but does not require further action and is dismissed;
 - (c) the case is substantiated wholly or in part, but should be dealt with informally by the Lord Chief Justice;

- (d) if the case is about a tribunal member, it should be dealt with by a President;
 - (e) the case is substantiated wholly or in part and—
 - (i) the Lord Chief Justice will exercise one or more of his disciplinary powers;
 - (ii) the Lord Chancellor will exercise his power to remove the subject of the disciplinary proceedings from judicial office; or
 - (iii) the Lord Chancellor will move an Address;
 - (f) they will refer the case to a review body under Part 7.
- (2) Where a case has been reviewed by a review body, the Lord Chancellor and the Lord Chief Justice shall be bound by any findings of fact made by the review body, and shall not take any disciplinary action more severe than that recommended by the review body.
- (3) The Lord Chancellor and the Lord Chief Justice may, after considering the review body's report, propose to take action under paragraphs (1)(a) to (e).
- (4) If the Lord Chancellor and the Lord Chief Justice cannot agree what action should be proposed, the case is dismissed.

Notification of proposed disciplinary action and final decision

- 27.** (1) Where the Lord Chancellor and the Lord Chief Justice propose to take a particular disciplinary action under regulation 26 or to make a record of the case in a form that may be referred to in any future disciplinary proceedings, they must—
- (a) notify the subject of the disciplinary proceedings of the proposal;
 - (b) state that the case will be recorded in a form that may be referred to in any future disciplinary proceedings, and
 - (c) invite him to make representations.
- (2) The subject of the disciplinary proceedings must make any representations within ten business days of an invitation under paragraph (1)(c).
- (3) After considering any representations made under paragraph (2), the Lord Chancellor and the Lord Chief Justice must make a final decision.
- (4) The Lord Chancellor and the Lord Chief Justice must notify the subject of the disciplinary proceedings of their decision.
- (5) If the Lord Chancellor and the Lord Chief Justice cannot agree what action should be taken, the case is dismissed.

PART 7
REVIEW BODIES

Composition of a review body

28. (1) A review body must consist of—

- (a) a judicial office holder of a higher judicial rank than the subject of the disciplinary proceedings;
- (b) a judicial office holder of the same judicial rank as the subject of the disciplinary proceedings; and
- (c) two other members, neither of whom has been—
 - (i) a judicial office holder, or
 - (ii) a practising lawyer (within the meaning of paragraph 6(1) of Schedule 12 to the Act).

(2) A judicial office holder for the purposes of paragraph (1)(a) or (b) may be a former judicial office holder and reference to his judicial rank means the rank he held immediately before he ceased to hold judicial office.

(3) The Lord Chief Justice with the agreement of the Lord Chancellor shall nominate the members of the review body under paragraphs 1(a) and (b).

(4) The Lord Chancellor with the agreement of the Lord Chief Justice shall nominate the other members.

(5) A person is ineligible for membership of the review body if he has had any previous involvement with the case concerned, other than as a member of a review body.

(6) The judicial office holder nominated under paragraph (1)(a) shall chair the review body and shall have a casting vote if necessary.

Convening a review body

29. (1) The Lord Chancellor and the Lord Chief Justice shall convene a review body to review a case where—

- (a) they decide to refer the findings of a judicial investigation under Part 5 to a review body;

- (b) the Ombudsman recommends that an investigation or determination should be reviewed by a review body, and the Lord Chancellor and the Lord Chief Justice accept the recommendation;
 - (c) the Ombudsman sets aside a determination made in a case in accordance with section 111 of the Act and directs that the case is to be referred to a review body;
 - (d) the subject of the disciplinary proceedings requests the Lord Chancellor and the Lord Chief Justice to refer the case to a review body under paragraph (2) unless—
 - (i) the request to refer is totally without merit; or
 - (ii) before a review body has convened, the subject of the disciplinary proceedings withdraws the request under paragraph (5)(a),
in which case the Lord Chancellor and the Lord Chief Justice shall not convene a review body unless they consider there are good reasons for doing so.
- (2) The subject of the disciplinary proceedings may request the Lord Chancellor and the Lord Chief Justice to refer the case to a review body where they notify him under regulation 27 that they propose—
- (a) to take disciplinary action against him, or
 - (b) to record the case in a form which may be referred to in later disciplinary proceedings.
- (2A) (a) Where the subject of the disciplinary proceedings makes a request under paragraph (2), the Lord Chancellor and the Lord Chief Justice must in the first instance refer that request to a nominated judge to consider whether the request is totally without merit.
- (b) The nominated judge invited to consider the request must not be a nominated judge who has previously considered any aspect of the case.
- (3) The Lord Chancellor and the Lord Chief Justice may impose a time limit within which the review body must submit its report to them.
- (4) Where the subject of the disciplinary proceedings wishes the Lord Chancellor and the Lord Chief Justice to refer the case to a review body under paragraph (1)(d), he must—
- (a) request them to do so within ten business days of the notification to him of the decision of the Lord Chancellor and the Lord Chief Justice;
 - (b) state in his request the issues that he wishes the review body to consider and why; and
 - (c) indicate whether he wishes to make oral representations to the review body.
- (5) (a) Subject to sub-paragraph (b), the subject of the disciplinary proceedings may withdraw a request under paragraph (2) at any time.

(b) If the request made under paragraph (2) is withdrawn after a review body has convened, the subject of the disciplinary proceedings must give reasons for withdrawing the request.

(c) The review body must discontinue its review if the request made under paragraph (2) has been withdrawn, unless it considers there are good reasons to continue with a review.

Functions of a review body

30. (1) A review body may review—

- (a) any finding of fact;
- (b) any decision or recommendation as to the conduct of a judicial office holder;
- (c) any disciplinary action which has been proposed or taken; and
- (d) the procedures which have been used to deal with the case, but only so far as necessary to enable the review body to deal with the matters in sub-paragraphs (a) to (c) above.

(2) The review body may consider matters not raised in a request under regulation 29(4)(b).

(2A) Where a review body reviews any finding of fact under paragraph (1)(a), any question as to whether, upon review, that fact is established must be decided on the balance of probabilities.

(3) The scope of review by a review body is not restricted by the findings of any previous investigation, whether under these regulations or not, or of any previous review of the case by a review body.

(4) A review body may recommend the taking of more severe disciplinary action than that previously recommended by an advisory committee, a President, the nominated judge, the investigating judge or a review body in relation to the case, or that which the Lord Chancellor and the Lord Chief Justice had intended to take.

(5) Where the Lord Chancellor and the Lord Chief Justice have proposed the removal from a judicial office of the subject of the disciplinary proceedings, the review body must advise whether removal is justified.

(6) Where a review body is considering whether the subject of the disciplinary proceedings should be suspended from office, the review body must consider that question in relation to each judicial office which he holds.

Review of documents and procedure of review body

- 31.** (1) A review body shall have access to the documents which the Office for Judicial Complaints, an advisory committee, a President, a nominated judge, the investigating judge, the Lord Chancellor and the Lord Chief Justice have used for the purpose of exercising their functions under these Regulations or under rules made under these Regulations.
- (2) The review body must initially review the case on the basis of those documents and of any statement under regulation 29(4)(b) which the judicial office holder has provided.
- (3) After its initial review under paragraph (2), the review body must—
- (a) determine the procedure it will follow; and
 - (b) inform the subject of the disciplinary proceedings of the proposed procedure.
- (4) A review body must take oral evidence from the subject of the disciplinary proceedings if so requested, unless it considers it unnecessary to do so.
- (5) A review body may take evidence, including oral evidence, from any other person.

Draft report of review body

- 34.** (1) The review body must prepare a report and show a draft of it to the subject of the disciplinary proceedings.
- (2) The review body may disclose a draft of its report to any other person who may be adversely affected by its contents.
- (3) The review body must invite each person to whom it discloses its draft report to make representations about it.
- (4) Any representations by the subject of the disciplinary proceedings, or the complainant if the draft report has been disclosed to that person, must be made within 10 business days of the invitation.
- (5) Disclosure of the draft report under paragraph (2)—
- (a) may be of the whole or part,
 - (b) may be in the form of a summary, and
 - (c) must omit any information the disclosure of which is prohibited under section 139 of the Act.

Completion of the review body's report

- 35.** (1) After considering any representations made in accordance with regulation 34, the review body must—
- (a) decide whether or not to make any changes requested;
 - (b) send its final report to the Lord Chancellor and the Lord Chief Justice, with details of any requested changes which it has not made;
 - (c) send a copy of its final report to the subject of the disciplinary proceedings;
 - (d) send a copy of its report to the Ombudsman, where the case was referred to the review body under regulation 29(1)(b) or (c), indicating any passages which contain personal information which ought not to be included in any report by the Ombudsman or shown by him to anyone other than the subject of the disciplinary proceedings; and
 - (e) send any relevant part of the report in full or in summary to any other person who has been invited to comment on the draft report, omitting any material the disclosure of which would be prohibited under section 139 of the Act.
- (2) The Lord Chancellor and the Lord Chief Justice shall make a decision after considering the review body's final report.

PART 8

MISCELLANEOUS

Deferral of consideration of a case

- 36.** (1) Where a case arises out of court or tribunal proceedings in which a complainant is involved, or in which the judicial office holder sits, the Office for Judicial Complaints may defer consideration of the case until it is notified that the court proceedings have been concluded.
- (2) Where a case arises out of court or tribunal proceedings in which a judicial office holder is a party, the Lord Chancellor and the Lord Chief Justice may defer consideration of the case until the Office for Judicial Complaints is notified that the court proceedings have been concluded.
- (3) Where the case relates to disciplinary proceedings by a professional body, the Lord Chancellor and the Lord Chief Justice may defer consideration of the case until the Office for Judicial Complaints is notified that the disciplinary proceedings have been concluded.

(4) Where the Lord Chancellor and the Lord Chief Justice defer consideration of a case under the previous paragraph, they may draw the case to the attention of the professional body responsible for the disciplinary proceedings.

(5) “Professional body” means the Law Society of England and Wales, the Law Society of Scotland, the Law Society of Northern Ireland, the Bar Council of England and Wales, the Faculty of Advocates, the Bar Council of Northern Ireland, the General Medical Council, or any other body which regulates professional practice.

Notification of a deferral

37. (1) Where a judicial office holder has been informed that he is the subject of a complaint, or otherwise the subject of disciplinary proceedings, the Office for Judicial Complaints must inform him of the decision to defer consideration of the case.

(2) Where consideration of a case is deferred, and the complainant has not withdrawn his complaint, the Office for Judicial Complaints must notify the complainant of the decision to defer consideration of the case.

Revival of a deferred case

38. When consideration of a case arising out of a complaint has been deferred under regulation 36, and is revived on the conclusion of any proceedings to which that regulation refers, the subject matter of the case shall be limited to that which formed the subject matter of the original complaint, unless the Lord Chancellor or the Lord Chief Justice decide otherwise.

Interim suspension

39. (1) If the Lord Chief Justice decides, with the agreement of the Lord Chancellor, to suspend a judicial office holder from his judicial office under section 108(4)(a), (6) or (7) of the Act, he must—

(a) notify the judicial office holder of the proposed suspension, the reasons for it and the time when it is proposed that it will come into effect;

(b) notify the judicial office holder of the factors that will be taken into account in determining when the suspension will end; and

- (c) invite him to make representations.
- (2) The judicial office holder must make any representations within ten business days of notification under paragraph (1)(a).
- (3) When any of the factors which the Lord Chief Justice and the Lord Chancellor have indicated would be taken into account in accordance with paragraph (1)(b) become operative, or any other matter which the Lord Chief Justice and the Lord Chancellor consider relevant arises, the Lord Chief Justice and the Lord Chancellor must—
 - (a) decide whether continuation of the suspension is appropriate;
 - (b) notify the judicial office holder of their decision under sub-paragraph (a) and of the reasons for that decision; and
 - (c) invite the judicial office holder to make representations.
- (4) The judicial office holder must make any representations within ten business days of notification under paragraph (3).

Disclosure of information

- 40.** (1) The Lord Chancellor and the Lord Chief Justice shall inform the complainant whether his complaint has been upheld or dismissed, and what if any disciplinary action they have agreed to take.
- (2) The Lord Chancellor and the Lord Chief Justice shall agree upon the terms of any information given under paragraph (1) and the manner in which it shall be given.
- (3) The Lord Chancellor and the Lord Chief Justice may disclose information about disciplinary proceedings or the taking of disciplinary action against identified or identifiable judicial office holders to anyone to whom they agree it is necessary to give such information.
- (4) The Lord Chancellor and the Lord Chief Justice may agree to the public disclosure of information about disciplinary action where they agree that the maintenance of public confidence in the judiciary requires that such information be disclosed.

Procedural requirements in relation to reviews by the Ombudsman

- 41.** (1) If the Ombudsman requests from any person information for the purposes of a review carried out under section 111 of the Act, and such information is not provided within ten

business days from notification of the request, or within such other period as he indicates, he may—

(a) prepare his review without regard to that information, and

(b) may disregard any representations made out of time by the person concerned.

(2) The Lord Chancellor, the Lord Chief Justice, the Office for Judicial Complaints, the nominated judge, an advisory committee, a President, an investigating judge, and a review body convened under Part 7 must provide the Ombudsman with such information as he may reasonably require for the purposes of a review carried out under section 111 or section 113 of the Act.

(3) Where the Ombudsman directs that an investigation should be undertaken or undertaken again by virtue of section 111(7)(b), the case shall be subject to Part 4 of these regulations.

Delegation

42. The Lord Chief Justice may delegate any of his functions under these regulations, other than those under regulations 9(2) and 10(2).

Scotland and Northern Ireland: eligibility to exercise functions

43. (1) Where the subject of the disciplinary proceedings is a member of a tribunal which has jurisdiction throughout Great Britain or the United Kingdom, the following office holders may also be nominated as a nominated judge under regulation 17, an investigating judge under regulation 20 or a member of a review body under regulation 28(1)(a) and (b)—

(a) where the subject of the disciplinary proceedings exercises functions wholly or mainly in Scotland, a sheriff, a sheriff principal or a judge of the Court of Session;

(b) where the subject of the disciplinary proceedings exercises functions wholly or mainly in Northern Ireland, the holder of an office listed in Schedule 1 to the Justice (Northern Ireland) Act 2002.

Scotland and Northern Ireland: Judicial Appointments and Conduct Ombudsman

44. Sections 110 to 113 of the Act apply—

(a) in relation to judicial office holders who exercise functions wholly or mainly in Scotland as if in section 110(8)(b) the reference to the Lord Chief Justice of England and Wales were a reference to the Lord President of the Court of Session; and

(b) in relation to judicial office holders who exercise functions wholly or mainly in Northern Ireland as if in section 110(8)(b) the reference to the Lord Chief Justice of England and Wales were a reference to the Lord Chief Justice of Northern Ireland.

Treatment of transitional complaints

45. These regulations apply to any complaint made before 3rd April 2006 which has not been withdrawn, dismissed or determined, but Parts 2 to 5 do not apply in a case where a judicial investigation has started before that date.