

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE OFFICE FOR JUDICIAL COMPLAINTS  
And  
HER MAJESTY'S COURTS AND TRIBUNALS SERVICE**

**Concerning handling of complaints against HMCTS employees arising  
from their involvement with the judicial discipline process**

**1. Introduction**

Complaints against employees of Her Majesty's Courts and Tribunals Service (HMCTS) must be dealt with in accordance with the provisions of HMCTS' complaints procedures. Complaints about alleged misconduct of a judicial office-holder must be handled in accordance with the provisions of the Judicial Discipline (Prescribed Procedures) Regulations 2006 (as amended), the Magistrates (Complaints) Rules 2008 and The Judicial Complaints (Tribunals) (No 2) Rules 2008. Justices' Clerks and senior members of their legal staff in particular are often involved in the judicial discipline process due to their role as Secretaries (or Deputy Secretaries) of local Advisory Committees or sub-committees. Consequently there have been occasions when the alleged behaviour of a Justices' Clerk or senior member of their legal staff has attracted criticism during the course of an investigation into the conduct of a judicial office-holder, and the alleged behaviour of the HMCTS employee has inadvertently been commented upon as part of the judicial discipline process.

The purpose of this MOU is to set out a procedure that ensures that complaints about HMCTS employees are always dealt with by HMCTS management in accordance with the staff complaints process and that any Review Body or Lord Chief Justice and Lord Chancellor consideration of any judicial misconduct takes into account that only the HMCTS Complaints process can lead to decisions relating to HMCTS staff.

**2. Remit of this Memorandum of Understanding**

This MOU applies to situations where a complaint is made against an HMCTS employee during, or as a consequence of, the consideration of a complaint into the conduct of a judicial office-holder, either by the judicial office-holder subject to the proceedings, an Investigating Judge, Nominated Judge, the Review Body, Lord Chancellor or Lord Chief Justice. The term complaint covers complaints against an employee of HMCTS, or concerns raised by a Review Body into the conduct of an HMCTS employee.

**3. Procedure**

a) Where a complaint is made about the behaviour or actions of an HMCTS employee during the course of, or as a consequence of, an investigation into the conduct of a judicial office-holder, the Office for Judicial Complaints (OJC) will notify the relevant HMCTS Director, with responsibility for handling complaints about the specified employee, within five working days. The notification will be in writing and shall be marked 'Protect – Staff'.

b) Once notified of the complaint, the Director or his delegate will consider the complaint in accordance with the HMCTS procedures and take any necessary action further to the outcome of the investigation of the complaint.

It should be noted that HMCTS could only undertake an investigation if either all parties are agreeable to the disclosure of information in connection with the case at issue, or the Lord Chancellor and Lord Chief Justice authorise disclosure of the information for this purpose (Section 139 Constitutional Reform Act 2005) \*. HMCTS will deal with any matters relating to the disclosure of and consent for the release of information that is required during any investigation in accordance with the legislative provisions.

c i) The OJC will, in consultation with the Investigating Judge, Nominated Judge or Review Body, determine the relevance of any complaint to the judicial conduct investigation, and decide whether to await the outcome of the HMCTS investigation or to proceed in the knowledge that the allegation has yet to be determined and to take this into account in the wording of any recommendations in their report to the Lord Chief Justice and Lord Chancellor. If such wording is included, OJC will advise the Review Body to disclose this part at least of their draft report to the HMCTS employee, so that their comment can be included in either the final version of the report or included with the submission to the Lord Chief Justice and Lord Chancellor sent with the report.

c ii) if the outcome of the complaint against the HMCTS employee is not relevant to the determination of the judicial conduct investigation, then the submission to the Lord Chancellor and Lord Chief Justice will proceed. The OJC will provide a copy of this Memorandum of Understanding and advise Review Bodies to ignore any issues raised by a complainant relating to the conduct of an HMCTS employee and advise the Lord Chancellor / Lord Chief Justice that the complaint against the employee is being dealt with by HMCTS. The Office for Judicial Complaints will be notified of the outcome of the HMCTS investigation within five working days of its conclusion. The OJC may notify the Lord Chancellor / Lord Chief Justice of the outcome as appropriate.

Signed



Her Majesty's Courts and Tribunals Service

Signed



Office for Judicial Complaints

Date 31 March 2011

**\* Section 139 of the Constitutional Reform Act 2005 (summary)**

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 from 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 party to whom the information relates agrees (this includes the giver of an opinion about another, as well as the person referred to).

(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.

(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.