

Bailiff Complaints Procedure

General principles and interpretation

1. This document deals with the procedure following a complaint against the Bailiff or the Deputy Bailiff. Any reference in this document to “the Bailiff” shall also be a reference to the Deputy Bailiff, unless the context provides otherwise.
2. The Bailiff holds appointment under the Crown and is subject to the disciplinary control of the Crown.
3. Words importing the masculine gender shall include females.
4. “Misconduct” shall mean a breach of the Code of Conduct for Members of the Judiciary of Jersey as amended from time to time.
5. “Qualified Person” means:
 - (a) a permanent judge or former permanent judge of the High Court of England and Wales or of a higher court in that jurisdiction;
 - (b) a permanent judge or former permanent judge of a court equivalent to those mentioned in (a) in Scotland, Northern Ireland, any of the Crown Dependencies including Jersey, or any other Commonwealth jurisdiction;
 - (c) an ordinary judge or former ordinary judge of the Jersey Court of Appeal; or
 - (d) a former Commissioner of the Royal Court.

Application

6. This Procedure shall apply when:
 - (a) a person (“the complainant”) makes a complaint in writing to His Excellency the Lieutenant Governor (“the Lt. Governor”), against the Bailiff; or
 - (b) it has otherwise come to the attention of the Lt. Governor that the Bailiff may have been guilty of misconduct.

Threshold determinations

7. The Lt. Governor shall without further consideration dismiss a complaint received under Paragraph(6)(a) if:
 - (a) (subject to Paragraph 8) it does not adequately particularise the matter complained of or is not in writing;
 - (b) it is expressly or is in effect a challenge to a judicial decision taken by the Bailiff or the Bailiff's judicial case management;
 - (c) it is expressly or is in effect a challenge to a decision taken by the Bailiff in his capacity as the President of the States;
 - (d) it is vexatious, malicious, frivolous or trivial;
 - (e) it is plainly without substance;
 - (f) it does not, even if true, require disciplinary action;
 - (g) it raises a matter already dealt with and does not present any material new evidence;
 - (h) it is about the private life of the Bailiff and could not reasonably be considered to affect his or her suitability to hold office; or
 - (i) for any other reason it does not relate to misconduct by the Bailiff.

8. The Lt. Governor shall not dismiss a complaint under Paragraph (7)(a) unless he has afforded the complainant an opportunity to provide adequate details of the complaint or an opportunity to put the complaint in writing. A complainant must provide any further details as requested or put the complaint in writing within 21 calendar days of any such request or such other period as the Lt. Governor shall reasonably permit.

9. The Lt. Governor may, after such preliminary inquiry as he deems fit, dismiss any complaint received under Paragraph 6(a) on the grounds that it is of insufficient substance or seriousness to merit further investigation.

10. Before dismissing a complaint against the Deputy Bailiff under Paragraphs 7 or 9, the Lt. Governor may consult with the Bailiff. In the case of a complaint against the Bailiff himself, the Lt. Governor may consult with the Deputy Bailiff before dismissing the complaint.

11. The Lt. Governor shall dismiss a complaint if it is received more than 6 months after the last of the events giving rise to the complaint, unless the Lt. Governor is satisfied that exceptional circumstances exist which justify the making of the complaint outside that period.
12. If the Lt. Governor considers that engaging this Procedure, in respect of a complaint or potential misconduct, might cause prejudice to an ongoing court case, he shall have the discretion to order a stay of any further action under this Procedure pending the resolution of the court case or until he no longer considers that such prejudice would be caused.
13. The Lt. Governor may, prior to making any threshold determination, take such advice and make such inquiries (including calling for a report from the Bailiff) as he thinks fit.
14. If the Lt. Governor dismisses a complaint under Paragraphs 7 or 9, he shall inform the complainant and the Bailiff in writing, and provide reasons.
15. If any complaint makes allegations of criminal conduct against the Bailiff, the Lt. Governor, having taken advice as he thinks fit, may decline to consider the request from a disciplinary perspective until any criminal investigation and process has been concluded and shall notify the complainant that he has so decided.

Informal resolution of minor complaints

16. If the Lt. Governor is of the view that a complaint is minor in nature he may seek to resolve it informally and shall have discretion in determining the best approach to such resolution.

Summary process

17. The Lt. Governor may recommend to Her Majesty that the Letters Patent appointing the Bailiff be withdrawn, without further investigation, if, and only if, any one or more of the following circumstances apply:
 - (a) the Bailiff has been convicted in Jersey of a criminal offence and sentenced to imprisonment (including a suspended sentence);

- (b) the Bailiff has been convicted elsewhere of any criminal offence which if committed in Jersey would have constituted a criminal offence, and has been sentenced to imprisonment (including a suspended sentence);
- (c) the Bailiff has been committed to prison for contempt of a Jersey court (including a suspended committal order);
- (d) the Bailiff has been convicted of an offence in Jersey involving dishonesty, deception, or perverting the course of public justice;
- (e) the Bailiff has been convicted of a sexual offence or violent offence in Jersey;
- (f) the Bailiff has become bankrupt within the meaning of the Interpretation (Jersey) Law 1954 or made a composition or arrangement with his or her creditors. This sub-paragraph shall not apply if the Bailiff has paid his or her debts in full before the Lt. Governor received a complaint or became aware of the bankruptcy or arrangement; or
- (g) the Bailiff is subject to a disqualification order under the Companies (Jersey) Law 1991.

18. Before a recommendation may be made under Paragraph 17, the Lt. Governor must give the Bailiff an opportunity to make representations as to:

- (a) whether the alleged ground is satisfied; and
- (b) if so, why he should not be removed from office.

19. The Bailiff must provide the representations referred to above within 14 calendar days of the request for them. The Lt. Governor may only make a recommendation under Paragraph 17 if the Bailiff has made representations or a 14 calendar day period has elapsed without such representations being provided.

20. The Lt. Governor shall prepare a report if he intends to make a recommendation to Her Majesty under Paragraph 17. Such report must identify one or more of the grounds which are said to apply under Paragraph 17 and must also include any representations made by the Bailiff. This report shall be sent with the recommendation to Her Majesty and the Bailiff must also receive a copy at the same time.

Procedure: investigation

21. If the Lt. Governor does not dismiss or informally deal with a complaint or potential misconduct and the summary process in Paragraph 17 is not engaged, he shall cause the matter to be investigated by a Qualified Person in a manner that seems appropriate to him.
22. Before appointing a Qualified Person under Paragraph 21, the Lt. Governor may consult with the Bailiff if the matter relates to the Deputy Bailiff. Where the matter relates to the Bailiff himself, the Lt. Governor may consult with the Deputy Bailiff.
23. A Qualified Person appointed under Paragraph 21 shall investigate the matter thoroughly and to achieve this may conduct interviews, request documents and take such other steps as required to ensure procedural fairness. Following the conclusion of his investigation, the Qualified Person shall submit an investigation report to the Lt. Governor.
24. The Bailiff shall be under an obligation to provide such assistance as may be necessary to the Qualified Person appointed to investigate the matter.
25. An investigation report submitted to the Lt. Governor pursuant to Paragraph 23 shall conclude whether or not there is sufficient evidence of misconduct to justify any further action under this Procedure. If the report concludes that there is insufficient evidence of misconduct, the investigator shall recommend to the Lt. Governor to dismiss the matter.
26. If a report submitted to the Lt. Governor pursuant to Paragraph 23 concludes that there is sufficient evidence of misconduct, the investigator shall recommend to the Lt. Governor to either seek an informal resolution or to appoint a disciplinary panel under Paragraphs 29 and 30.

Procedure following receipt of investigation report

27. Following the receipt of an investigation report pursuant to Paragraph 23, the Lt. Governor shall dismiss the matter if the report concludes that there is insufficient evidence of misconduct to justify any further action under this Procedure.

28. If the investigation report concludes that there is sufficient evidence of misconduct, the Lt. Governor shall take the recommendations of the report into account and either seek an informal resolution or appoint a disciplinary panel under Paragraph 29.

Panel process

29. If the Lt. Governor determines that a disciplinary panel (“the Panel”) is to be appointed to consider the matter, the Lt. Governor shall request the Lord Chief Justice of England and Wales to nominate members to the Panel.

30. The Panel shall be comprised of three Qualified Persons and one shall be appointed as Chairman. A person appointed by the Lt. Governor under Paragraph 21 shall not be eligible for appointment to the Panel.

31. The case against the Bailiff shall be presented by a person appointed by the Lt. Governor.

32. The Panel shall notify the Bailiff of the date, time and venue of the hearing at least 28 calendar days in advance. The hearing shall be held in Jersey unless the Panel determines, in exceptional circumstances, that an alternative location is more appropriate. The hearing shall also be held in private.

33. The notice to the Bailiff of the hearing shall also include the following information:

- (a) the right for the Bailiff to be legally represented at the hearing and that the reasonable expenses of any legal representation shall be met by the Crown subject to any order to the contrary by the Panel at the conclusion of the proceedings; and
- (b) the identity of the persons who shall be on the Panel. The Bailiff shall be invited to make the Lt. Governor aware of any actual or perceived conflicts of interest which the Bailiff contends that a person nominated to the Panel has.

34. The Panel shall be supplied with copies of the investigation report. The Panel may also request any documents which appear to be relevant or make any further inquiries it considers appropriate to fulfil its functions.

35. The Panel shall give the Bailiff or his representative, and the person appointed to present the case against the Bailiff, an opportunity to be heard, to call such evidence as they think fit and to cross-examine witnesses.
36. The Panel may make whatever arrangements necessary or appropriate for hearing the complainant or other witnesses or obtaining other evidence and may, save as otherwise set out herein, determine its own procedure generally subject to the requirements of fairness.

Panel decision

37. The Panel shall be entitled to take reasonable time after the conclusion of the hearing to make its decision. The Panel shall determine if the facts amount to misconduct, with the burden of proof resting on a person appointed under Paragraph 31, such burden being discharged if the evidence satisfies the civil standard.
38. If the Panel is not satisfied that there has been misconduct, it shall recommend to the Lt. Governor to dismiss the matter.
39. If the Panel is satisfied that there has been misconduct, the Panel shall make a recommendation to the Lt. Governor that any one or more of the following actions be taken:
- (a) no further action;
 - (b) privately reprimand the Bailiff;
 - (c) require the Bailiff to issue a written apology to the complainant;
 - (d) publicly rebuke the Bailiff;
 - (e) allow the Bailiff to remain in office subject to conditions or undertakings;
 - (f) invite the Bailiff to resign; or
 - (g) recommend that Her Majesty withdraw the Letters Patent appointing the Bailiff.
40. The Panel shall prepare a report which sets out:
- (a) the facts of the case
 - (b) whether in its opinion there has been any misconduct; and
 - (c) what recommendations are being made to the Lt. Governor.

41. The Panel must send its draft report to the Bailiff and the Lt. Governor who may comment on the report within 14 calendar days of receiving it.
42. The Panel must take any comments received under Paragraph 41 into account.
43. The Panel must send the final report to the Lt. Governor who shall act in accordance with the Panel's recommendations. The Lt. Governor shall, without delay, communicate his decision and provide a copy of the final report to the Bailiff, Deputy Bailiff and, if relevant, the complainant.
44. For the avoidance of doubt, any recommendations made by the Lt. Governor to Her Majesty in pursuance of this Procedure, may be made by means of communication with the Secretary of State for Justice, in his role as Privy Counsellor for the Crown Dependencies, or such other Privy Counsellor who has responsibility for the Crown Dependencies at the material time.
45. In the event that there is a vacancy in the office of the Lt. Governor, his functions under this Procedure shall be discharged by the Senior Ordinary Judge of the Jersey Court of Appeal.