

# Judicial Complaints Procedure

## General principles and interpretation

1. This document deals with the procedure following a complaint against the following:
  - (a) a Commissioner of the Royal Court appointed by the Bailiff under Article 10 of the Royal Court (Jersey) Law 1948, either for a specified term or for hearing a particular cause or matter;
  - (b) a Jurat of the Royal Court;
  - (c) the Magistrate and Assistant Magistrate as appointed by the Bailiff under Article 1 of the *Loi (1864) concernant la charge de Juge d’Instruction (“the 1864 Loi”)*. Any reference in this document to “the Magistrate” shall also be a reference to the Assistant Magistrate;
  - (d) a Relief Magistrate appointed by the Bailiff under Article 6 of the 1864 Loi;
  - (e) an ordinary judge of the Court of Appeal appointed by Her Majesty under Article 2 of the Court of Appeal (Jersey) Law 1961;
  - (f) the Judicial Greffier;
  - (g) the Deputy Judicial Greffier and any officer of the Judicial Greffe who is authorised by the Judicial Greffier under Article 6 of the Departments of the Judiciary and Legislature (Jersey) Law 1965 (“the 1965 Law”) to discharge the judicial functions of the Judicial Greffier (the latter shall be referred to in this document as “**Greffier(s) Substitute**”).
  - (h) the Viscount; and
  - (i) the Deputy Viscount and Viscount Substitute when discharging the duties of coroner pursuant to the Inquests and Post-Mortem Examinations (Jersey) Law 1995, when hearing evidence on commission or exercising any other judicial function of the Viscount;
  - (j) the Chairman (“the JEDT Chairmen”); and each Deputy Chairman (“JEDT Deputy Chairman”) of the Jersey Employment and Discrimination Tribunal and the Chairman and Deputy Chairman of the Mental Health Tribunal (“the Mental Health Tribunal Chairmen”).

2. Any reference in this document to a “judicial office holder” shall be taken to include a reference to each of the above office holders. Where provisions relate only to one or more of the said judicial office holders, such provisions will specify those office holders.
3. Nothing in this Procedure shall prevent the exercise by the Bailiff, the Crown or whichever person or body has a power at law to suspend a judicial office holder, from suspending the judicial office holder pending the outcome of any investigation or hearing.
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 Crown Court or 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 Commissioner or former Commissioner of the Royal Court.
6. Words importing the masculine gender shall include females.

#### Application

7. This Procedure shall apply when:
  - (a) a person (“the complainant”) makes a complaint in writing to the Bailiff against a judicial office holder; or
  - (b) it has otherwise come to the attention of the Bailiff that the judicial office holder may have been guilty of misconduct.

#### Threshold determinations

8. The Bailiff shall, without further consideration, dismiss a complaint received under Paragraph(7)(a) if:
  - (a) (subject to Paragraph 9) 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 judicial office holder or his judicial case management;
  - (c) it is vexatious, malicious, frivolous or trivial;
  - (d) it is plainly without substance;
  - (e) it does not, even if true, require disciplinary action;
  - (f) it raises a matter already dealt with and does not present any material new evidence;
  - (g) it is about the private life of the judicial office holder and could not reasonably be considered to affect his suitability to hold office; or
  - (h) for any other reason it does not relate to misconduct by the judicial office holder.
9. The Bailiff shall not dismiss a complaint under Paragraph (8)(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 Bailiff shall reasonably permit.
10. The Bailiff may, after such preliminary inquiry as he deems fit, dismiss any complaint received under Paragraph 7(a) on the grounds that it is of insufficient substance or seriousness to merit further investigation.
11. The Bailiff 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 Bailiff is satisfied that exceptional circumstances exist which justify the making of the complaint outside that period.
12. If the Bailiff 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 Bailiff may, prior to making any threshold determination, take such advice and make such inquiries (including calling for a report from the judicial office holder) as he thinks fit.
14. If the Bailiff dismisses a complaint under Paragraphs 8 or 10, he shall inform the complainant and the judicial office holder in writing, and provide reasons.

15. If any complaint makes allegations of criminal conduct against the judicial office holder, the Bailiff, 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 Bailiff 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 Bailiff may consider, without further investigation, taking the following dismissal action if, and only if, any one or more of the circumstances in Paragraph 18 apply:

- (a) terminating the appointment of a Commissioner;
- (b) invite the Superior Number of the Royal Court to petition her Majesty in Council for an Order removing the Jurat from office;
- (c) dismissing a Relief Magistrate;
- (d) recommending to Her Majesty the removal from office of an ordinary judge of the Court of Appeal;
- (e) recommending to the Superior Number of the Royal Court to petition Her Majesty in Council for an Order removing the Magistrate from office;
- (f) recommending to the Superior Number of the Royal Court to petition Her Majesty in Council for an Order removing the Judicial Greffier from office;
- (g) recommending that the Judicial Greffier summarily dismiss the Deputy Judicial Greffier or a Greffier Substitute;
- (h) recommending to the Assembly of the States that the Viscount be dismissed from office; or
- (i) recommending that the Viscount summarily dismiss the Deputy Viscount or terminate the appointment of a Viscount Substitute.
- (j) recommending to the Royal Court the dismissal of the JEDT Chairman or a JEDT Deputy Chairman;
- (k) dismissing a Mental Health Tribunal Chairman.

18. The circumstances for the purposes of the summary process in Paragraph 17 are where:
- a) the judicial office holder has been convicted in Jersey of a criminal offence and sentenced to imprisonment (including a suspended sentence);
  - b) the judicial office holder 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 judicial office holder has been committed to prison for contempt of a Jersey court (including a suspended committal order);
  - d) the judicial office holder has been convicted of an offence in Jersey involving dishonesty, deception, or perverting the course of public justice;
  - e) the judicial office holder has been convicted of a sexual offence or violent offence in Jersey;
  - f) the judicial office holder 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 judicial office holder has paid his or her debts in full before the Bailiff received a complaint or became aware of the bankruptcy or arrangement; or
  - g) the judicial office holder is subject to a disqualification order under the Companies (Jersey) Law 1991.
19. Before the relevant action may be taken under Paragraph 17, the Bailiff must give the judicial office holder 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.
20. The judicial office holder must provide the representations referred to above within 14 calendar days of the request for them, save that a judicial office holder who is ordinarily resident in a jurisdiction other than Jersey may do so within 21 calendar days. The Bailiff may only take any action under Paragraph 17 if the judicial office holder has made representations or a 14 calendar day period or 21 day calendar period (as the case may be) has elapsed without such representations being provided.

21. The Bailiff shall prepare a report if he uses the summary process under Paragraph 17. The judicial office holder must receive a copy of the report. Such report must identify one or more of the grounds in Paragraph 18 which are said to apply and include any representations made by the judicial office holder. In the case of a Jurat, the Magistrate or the Judicial Greffier, the report must also be furnished to the Superior Number and shall accompany the petition to Her Majesty. In the case of the Viscount, the report must be furnished to the States. In the case of the Deputy Judicial Greffier or a Greffier Substitute, the report must also be furnished to the Judicial Greffier. In the case of the Deputy Viscount or a Viscount Substitute, the report must also be furnished to the Viscount. In the case of the JEDT Chairman or a JEDT Deputy Chairman, the report must be furnished to the Royal Court.

#### Procedure: investigation

22. If the Bailiff does not dismiss or informally deal with a complaint or potential misconduct and the summary process in Paragraph 17 is not engaged, he may cause the matter to be investigated in a manner that seems appropriate to him by a person he considers to be suitably qualified to conduct the investigation.

23. An investigator appointed under Paragraph 22 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 investigator shall submit an investigation report to the Bailiff.

24. The judicial office holder shall be under an obligation to provide such assistance as may be necessary to the investigator.

#### Procedure following receipt of investigation report

25. Following the receipt of an investigation report pursuant to Paragraph 22, the Bailiff shall dismiss the matter if the report concludes that there is insufficient evidence of misconduct to justify any further action under this Procedure.

26. If, following the receipt of an investigation report pursuant to Paragraph 22, the Bailiff is of the opinion that there is sufficient evidence of misconduct he shall appoint a disciplinary panel (“the Panel”) and refer the complaint to the Panel.
27. The Bailiff shall furnish with the reference to the Panel all relevant documentation including the investigation report.

#### Panel process

28. If the Bailiff determines that the Panel is to be appointed to consider the matter, the Panel shall be comprised of three Qualified Persons, and one shall be appointed as Chairman.
29. The case against the judicial office holder shall be presented by a person appointed by the Bailiff.
30. The Panel shall notify the judicial office holder 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.
31. The notice to the judicial office holder of the hearing shall also include the following information:
- (a) the right for the judicial office holder to be legally represented at the hearing; and
  - (b) the identity of the persons who shall be on the Panel. The judicial office holder shall be invited to make the Bailiff aware of any actual or perceived conflicts of interest which the judicial office holder contends that a person nominated to the Panel has.
32. 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.

33. The Panel shall give the judicial office holder or his representative, and the person appointed to present the case against him or her, an opportunity to be heard, to call such evidence as they think fit and to cross-examine witnesses.
34. 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

35. 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 29, such burden being discharged if the evidence satisfies the civil standard.
36. If the Panel is not satisfied that there has been misconduct, it shall recommend to the Bailiff to dismiss the matter.
37. If the Panel is satisfied that there has been misconduct, the Panel may make a recommendation to the Bailiff to take any one or more of the following actions:
- (a) no further action;
  - (b) privately reprimand the judicial office holder;
  - (c) require the judicial office holder to issue a written apology to the complainant;
  - (d) publicly rebuke the judicial office holder;
  - (e) allow the judicial office holder to remain in office subject to conditions or undertakings;
  - (f) take the following suspension action, save that a period of suspension may not exceed 6 months in any case:
    - i. suspend a Commissioner ;
    - ii. recommend to Her Majesty to suspend a Jurat;
    - iii. suspend a Relief Magistrate;
    - iv. recommend to Her Majesty to suspend the Magistrate;
    - v. recommend to Her Majesty to suspend an ordinary judge of the Court of Appeal;



- vi. recommend to the Superior Number of the Royal Court to suspend the Judicial Greffier;
  - vii. recommend to the Judicial Greffier to suspend the Deputy Judicial Greffier or a Greffier Substitute;
  - viii. suspend the Viscount; or
  - ix. recommend to the Viscount that the Deputy Viscount or a Viscount Substitute be suspended;
  - x. recommend to the Royal Court that the JEDT Chairman or a JEDT Deputy Chairman be suspended ; or
  - xi. suspend a Mental Health Tribunal Chairman.
- (g) invite the judicial office holder to resign; or
- (h) take the following dismissal action in respect of the relevant judicial office holder:
- i. terminate the appointment of a Commissioner;
  - ii. recommend to the Superior Number of the Royal Court to petition Her Majesty in Council for an Order removing the Jurat from office;
  - iii. dismiss a Relief Magistrate;
  - iv. recommend to Her Majesty the removal from office of an ordinary judge of the Court of Appeal;
  - v. recommend to the Superior Number of the Royal Court to petition Her Majesty in Council for an Order removing the Magistrate from office;
  - vi. recommend to the Superior Number of the Royal Court to petition Her Majesty in Council for an Order removing the Judicial Greffier from office;
  - vii. recommend to the Judicial Greffier to dismiss the Deputy Judicial Greffier or a Greffier Substitute;
  - viii. recommend to the States and the Bailiff that the Viscount be dismissed from office;
  - ix. recommend to the Viscount that the Deputy Viscount or a Viscount Substitute be dismissed from office;
  - x. recommend to the Royal Court that the JEDT Chairman or a JEDT Deputy Chairman be dismissed; or
  - xi. dismiss a Mental Health Tribunal Chairman.

38. 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) the recommendations which are being made to the Bailiff.

39. The Panel must send its draft report to the Bailiff and the judicial office holder who may comment on the report within 14 calendar days of receiving it.

40. The Panel must take any comments received under Paragraph 39 into account.

41. The Panel must send the final report to the Bailiff who shall take the Panel's recommendations into account in reaching a decision. The Bailiff must communicate his decision and send a copy of the Panel's final report to the judicial office holder, and if relevant the complainant, without delay.

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