

**QUESTIONNAIRE FROM THE SPECIAL RAPPEUR
ON THE INDEPENDENCE OF JUDGES AND LAWYERS
REGARDING THE DISCIPLINARY, CIVIL AND CRIMINAL LIABILITY OF JUDGES**

**RESPONSE OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND**

The Scotland Act 1998, the Northern Ireland Act 1998, and the Government of Wales Act 1998 (which was later effectively superseded by the Government of Wales Act 2006) established three devolved legislatures and transferred to them some legislative powers that were previously held at Westminster Parliament. Further powers have been devolved since these original Acts, most recently through the Scotland Act 2016 and Wales Act 2017.

DISCIPLINARY LIABILITY

1. What are the types of misbehaviours that may give rise to disciplinary proceedings against judges? Are these violations codified in national legislation and/or professional codes of ethics?

England and Wales

Individuals can complain about the misconduct of a judge, magistrate, tribunal member or coroner. "Misconduct" has no statutory definition for these purposes, and can include a wide range of behaviour, language or conduct issues, such as:

- i. The use of racist, sexist or offensive language
- ii. Falling asleep in court
- iii. Inappropriate use of social media
- iv. Misusing judicial status for personal gain or advantage
- v. Other personal conduct in or outside of the court that could bring the judiciary into disrepute

A full list of potential misconduct can be found on the website of Her Majesty's Government: <https://www.gov.uk/complain-judge-magistrate-tribunal-coroner> and on the website of the independent body responsible for dealing with disciplinary proceedings against courts, judiciary and coroners, the Judicial Conduct Investigations (JCIO): <https://judicialconduct.judiciary.gov.uk/making-a-complaint/what-can-i-complain-about/>.

Further information on actual misconduct is available in the JCIO's annual reports and in disciplinary statements published when a judicial office holder receives a sanction for misconduct: <https://judicialconduct.judiciary.gov.uk/>

Judicial office holders cannot be subject to disciplinary proceedings for their decision-making or case management; the appropriate method of challenge for such issues is appeal to a higher court.

Scotland

As in England and Wales, misconduct has no statutory definition for these purposes and potentially includes a wide range of behaviour, language and conduct issues. A widely accepted framework of judicial ethics has been adopted to help ensure that both judicial office holders and the public are aware of the principles by which judicial office holders are guided in their personal and professional life: [Statement of Principles of Judicial Ethics for the Scottish Judiciary](#). Further information can be found on the [website](#) of the Scottish judiciary.

The Scottish judiciary has a tradition of high standards of judicial conduct. Maintaining such standards is essential if a community is to have confidence in its judiciary.

Northern Ireland

In Northern Ireland, there are a number of circumstances in which the Lord Chief Justice¹ may take disciplinary action. These are prescribed in a Protocol on Judicial Discipline and are as follows:

- Where a complaint against a member of the judiciary is upheld;
- Where it is brought to the Lord Chief Justice's attention that a member of the judiciary may have acted inappropriately, the Lord Chief Justice may cause the matter to be investigated in line with the approach set out in his Code of Practice on Complaints (it should be noted that where the inappropriate behaviour is criminal in nature, any investigation will follow any criminal proceedings);
- Where it is apparent to the Lord Chief Justice, either on the basis of evidence available to him or after interview with the member of the judiciary, that inappropriate behaviour has taken place, the Lord Chief Justice may take disciplinary action without further investigation, but he will first give the member of the judiciary the opportunity to comment.

A member of the judiciary **must** inform the Lord Chief Justice's Office immediately if he or she has been charged with any criminal offence (including a minor road traffic offence which attracts an endorsement).

2. Please describe the procedure for bringing disciplinary complaints against judges.

England and Wales

The statutory framework for considering complaints of misconduct is underpinned by the [Judicial Discipline \(Prescribed Procedures\) Regulations 2014](#). Three sets of rules derive from those regulations, which set out the procedure by which complaints are made and considered.

¹ The Lord Chief Justice of Northern Ireland is Head of the Judiciary in Northern Ireland and President of the Courts of Northern Ireland.

- i. The [Judicial Conduct \(Judicial and Other Office Holders\) Rules 2014](#) govern the consideration of complaints about coroners and salaried and fee-paid members of the courts judiciary. Complaints are made to, and initially considered by, the JCIO.
- ii. The [Judicial Conduct \(Tribunals\) Rules 2014](#) govern the consideration of complaints about members of the tribunals judiciary. Complaints are made to, and initially considered by, the relevant chamber president.²
- iii. The [Judicial Conduct \(Magistrates\) Rules 2014](#) govern the consideration of complaints about magistrates. Complaints are made to, and initially considered by, one of seven regional, conduct advisory committees.

Cases involving members of tribunals judiciary and magistrates are referred, via the JCIO, to the Lord Chancellor³ and Lord Chief Justice⁴ (or his judicial delegates⁵) only when a chamber president or advisory committee has made a finding of misconduct.

In practice, complaints to the JCIO are made via an online complaints portal, or by post if the complainant does not have internet access. An overview of the process for considering complaints made to the JCIO, as set out in the Judicial Conduct (Judicial and Other Office Holders) Rules 2014, is attached at **Annex A**.

Who can initiate disciplinary proceedings against judges?

Anyone can make a complaint about the personal misconduct of a judicial office holder. The criteria for what constitutes a complaint which can be accepted for consideration are set down in the rules referred to above. Additionally, complaints must be made within three months of the matter complained of.

Which body is responsible for receiving disciplinary complaints and conducting disciplinary investigations?

There are different bodies that are responsible for receiving complaints and conducting disciplinary investigations:

- i. The JCIO deal with complaints about the personal conduct of the members of the courts judiciary and coroners: Deputy District Judge, District Judge, Master, Recorder, Coroner/Assistant Coroner, Circuit Judge, High Court Judge and Lord Justice.
- ii. Tribunal Presidents deal with complaints about tribunal judges and members.
- iii. Magistrates' Advisory Committees across England and Wales deal with complaints about magistrates (Justices of the Peace). These non-statutory committees are responsible for the recruitment, administration and oversight of magistrates within their area, under the authority of the Lord Chancellor.

Authority responsible for issuing disciplinary sanctions

² Chamber presidents lead the jurisdiction of their tribunal, taking an active role in ensuring jurisprudential and practical consistency in both decision-making and in the setting and interpretation of practice and procedure.

³ The Lord Chancellor is a senior member of the UK Cabinet; he or she heads the Ministry of Justice as the Secretary of State for Justice.

⁴ The Lord Chief Justice is the Head of the Judiciary in England and Wales and the President of the Courts of England and Wales.

⁵ The Lord Chief Justice has a number of statutory functions, the exercise of which may be delegated to a nominated judicial office holder (as defined by section 109(4) of the Constitutional Reform Act 2005)

The JCIO, Tribunal Presidents and Magistrates' Advisory Committees do not have disciplinary powers of their own. Only the Lord Chancellor and the Lord Chief Justice (or his judicial delegate) can, by joint agreement, sanction a judicial office-holder for misconduct, after considering a recommendation from the appropriate body which has considered the complaint.

Can decisions of the disciplinary body be appealed before a competent court?

There are no appeal routes against the Lord Chancellor and the Lord Chief Justice's decision. If a party to a concluded complaint feels that their complaint has been mishandled, they can complain to the Judicial Appointments and Conduct Ombudsmen (JACO). The JACO can only consider complaints about the process followed in reaching the decision, not the decision itself.

Scotland

The Lord President⁶ has the power under [section 28 of the Judiciary and Courts \(Scotland\) Act 2008](#) and [Schedule 8 of the Tribunals \(Scotland\) Act 2014](#) to make rules in connection with the investigation and determination of any matter concerning the conduct of judicial office holders. In exercise of these powers, the current rules are found in the [Complaints about the Judiciary \(Scotland\) Rules 2017](#) and [Complaints about Members of the Scottish Tribunals Rules 2018](#).

Who can initiate disciplinary proceedings against judges?

Anyone can make a complaint about the personal misconduct of a judicial office holder. The criteria for what constitutes a complaint which can be accepted for consideration are set down in the complaint guidance for [court judiciary](#) and [tribunal judiciary](#). Additionally, complaints must be made within three months of the matter complained of.

Which body is responsible for receiving disciplinary complaints and conducting disciplinary investigations?

The Judicial Office for Scotland (JOS) deals with all complaints about the Scottish judiciary. Each complaint is handled in accordance with the relevant Rules, noted above – also see this [process map](#). If the complaint is not dismissed by the JOS, and the disciplinary judge (DJ) or the President of Scottish Tribunals (PST) concludes that the complaint should be investigated the JOS will refer the complaint for investigation to a senior judicial office holder nominated by the DJ or PST.

Authority responsible for issuing disciplinary sanctions

The JOS, DJ, PST and the investigating judicial office holder do not have disciplinary powers. Only the Lord President can issue a disciplinary sanction – formal advice, a formal warning, or a reprimand – to a judicial office holder, but only after a complaint has been investigated and the investigating judicial office holder recommends that the Lord President exercise such power.

⁶ The Lord President is the senior judge in Scotland and the Head of the Judiciary.

Can decisions of the disciplinary body be appealed before a competent court?

If a party to a concluded complaint feels that their complaint has been mishandled, they can ask the Judicial Complaints Reviewer (JCR) to review the handling of the complaint. The JCR has no powers to consider the merits or the disposal of a complaint. The judicial office holder could also lodge a petition for judicial review with the Court of Session, the Scottish appeals court.

Northern Ireland

Who can initiate disciplinary proceedings against judges?

Disciplinary procedures may be invoked as a consequence of the upholding of a complaint against a member of the judiciary, or where a member of the judiciary appears to the Lord Chief Justice to have behaved inappropriately. One of the disciplinary actions the Lord Chief Justice may take is to refer the matter to a statutory tribunal under s7 and 8 of the 2002 Act but there are other options (set out in the [Protocol on Judicial Discipline](#))

Which body is responsible for receiving disciplinary complaints and conducting disciplinary investigations?

A judicial office holder may only be suspended or removed from office after a statutory tribunal has been convened in accordance with sections 7 and 8 of the [Justice \(Northern Ireland\) Act 2002](#), as amended. The most senior judges, Lord Justices of Appeal and judges of the High Court appointed before 2005 may only be removed from office, or suspended from office, in accordance with the process contained within the [Judicature \(Northern Ireland\) Act 1978 s.12c](#). The remaining listed judicial office holders may be suspended by the Lord Chief Justice where a statutory tribunal so recommends.

In addition, the Lord Chief Justice of Northern Ireland may, after receiving representations from the member of the judiciary, instruct him or her not to sit for a prescribed period or to hear a particular class of case in the following circumstances:

- Where he or she is under investigation for a serious offence or is subject to an investigation for conduct, whether under the Code of Practice on Complaints or otherwise, which if proved calls into question his or her ability to sit;
- Where he or she is subject to criminal proceedings or there is pending an appeal from those; serving a suspended sentence imposed in criminal proceedings; or subject to disciplinary procedures in relation to conduct constituting a criminal offence for which he or she has been convicted; or
- Where he or she is, for example, awaiting training following a finding that this is required before returning to work (this may take the form of a restriction in the areas of work to be undertaken, for example, that he or she should not undertake family law cases).

The Lord Chief Justice will not use the option of instructing a member of the judiciary not to sit other than in extreme cases. He will await the outcome of the investigation or proceedings before determining what, if any, disciplinary action should be taken.

Where the Lord Chief Justice proposes to take a particular disciplinary action he will notify the subject of the disciplinary proceedings of the proposal and invite him or her to make representations. After considering any representations, the Lord Chief Justice will make a final decision and will notify the subject of the disciplinary outcome.

Can decisions of the disciplinary body be appealed before a competent court?

A member of the judiciary may seek a review of the disciplinary penalty imposed, where this amounts to more than advice, training or mentoring, within ten working days from notification of the Lord Chief Justice's decision. A request for a review should be made in writing to the Lord Chief Justice's Office. The Lord Chief Justice may refer the matter to an independent judge of appropriate seniority. The judge may review the penalty imposed and make recommendations to the Lord Chief Justice. The Lord Chief Justice will notify the member of the judiciary of his decision.

3. Please provide information on the disciplinary penalties that may be imposed on the judge if found guilty of a professional misconduct. Are these penalties codified in national legislation and/or professional codes of ethics?

England and Wales

The sanctions available to the Lord Chancellor and Lord Chief Justice in cases of judicial misconduct are set down in primary legislation: [section 108 of the Constitutional Reform Act 2005](#). They are, in order of seriousness: formal advice, formal warning, reprimand and removal from office.

Scotland

The powers available to the Lord President are set down in primary legislation:

- Courts: [section 29 of the Judiciary and Courts \(Scotland\) Act 2008](#)
- Tribunals: [Schedule 8 to the Tribunals \(Scotland\) Act 2014](#)

They are, in order of seriousness: formal advice, formal warning, reprimand and removal from office.

The powers for removal from office are as follows:

- Judges: [section 35 of the Judiciary and Courts \(Scotland\) Act 2008](#)
- Shrieval judiciary: [sections 21-25 of the Courts Reform \(Scotland\) Act 2014](#)
- Justices of the Peace: [section 71 of the Criminal Proceedings etc \(Reform\) \(Scotland\) Act 2007](#)
- Tribunal Members: [Schedule 8 to the Tribunals \(Scotland\) Act 2014](#)

Northern Ireland

The Lord Chief Justice of Northern Ireland, or his delegate,⁷ may impose one or more of the following disciplinary actions if a complaint is upheld or there is a determination that inappropriate conduct took place:

- Advice/Training/Mentoring – the Lord Chief Justice may give the member of the judiciary advice as to his conduct and how it could be improved in future and/or a recommendation that he or she undertake training aimed at improving the conduct in question. Arrangements may be put in place to facilitate a period of mentoring.
- Informal Warning: the Lord Chief Justice will issue the judicial office holder with an informal, written warning if his or her conduct is inappropriate but does not merit a formal warning.
- Formal Warning: the Lord Chief Justice will issue the judicial office holder with a formal written warning if his or her conduct failed to meet the required standard.
- Final Warning: the Lord Chief Justice will inform the judicial office holder in writing that his or her conduct has fallen so significantly or repeatedly short of the required standard, and that further misbehaviour could result in referral to a removal tribunal.
- Restriction of Practice: restrictions may be placed on the types of case assigned to the judicial office holder for a period of time or subject, for example, to training being undertaken.
- Referral to a statutory tribunal (sections 7 and 8 of the Justice (Northern Ireland) Act 2002): if the Lord Chief Justice determines that the judicial office holder's conduct fell so far short of the required standard that removal may be warranted, he may, after consulting the Northern Ireland Judicial Appointments Ombudsman, refer the matter to a statutory tribunal. The statutory tribunal will present its recommendations to the Lord Chief Justice. Removal from office takes place in line with the process described in the answer to question 3, above.

4. Please provide detailed information, including disaggregated data, on the number of judges that have been subject to disciplinary proceedings in the last ten years. How many of them were found guilty of a disciplinary misconduct? How many of them were removed from office?

England and Wales

From April 2013, data about judicial office holders (including members of the courts judiciary, tribunals judges and members, and magistrates) subject to disciplinary sanctions has been published in the JCIO's annual reports: <https://judicialconduct.judiciary.gov.uk/reports-publications/>. The annual reports of the predecessor to the JCIO, the Office for Judicial

⁷ The Lord Chief Justice may delegate the function of giving advice to such members of the judiciary as he considers appropriate, for example, where the investigation of a complaint against a tribunal member is upheld and the Lord Chief Justice determines that the member should receive informal advice, he may delegate this function to the Tribunal President.

Complaints, can also be found online.⁸ Data on disciplinary action in the reports is disaggregated by type of judicial office and sanctions imposed.

Judicial disciplinary cases resulting in a sanction in the current year can be found on the JCIO's website: <https://judicialconduct.judiciary.gov.uk/disciplinary-statements/2020/>.

Scotland

The Judicial Office for Scotland publishes statistics each year on the number of complaints received and their outcome: <http://www.scotland-judiciary.org.uk/52/0/Publications>.

Northern Ireland

Data on judicial conduct and complaints is published on the website of the Judiciary in Northern Ireland: <https://judiciaryni.uk/judicial-conduct-and-complaints>. In this small jurisdiction, only a very limited number of judicial office holders have been subject to disciplinary proceedings and no separate figures have been collated. None were removed from office.

CIVIL AND CRIMINAL LIABILITY

- 5. Can a judge be subject to civil liability and/or criminal responsibility as a result of the exercise of his or her functions? If so, in which cases? Who may lodge a complaint against the judge? And which authority is responsible for adjudicating these cases?**

England and Wales

Immunity from prosecution is conferred on judges in respect of actions arising out of the exercise of their judicial function. This means that any such action brought against a judge cannot proceed and must be struck out at the outset. Consequently, a judge cannot owe a contractual duty or a tortious duty of care to litigants in their courts. Judges also benefit from immunity from suit for defamation in respect of their speech, including about parties or witnesses, in the course of legal proceedings. Where a judge gives a decision that a party does not like, the appropriate route of challenge is appeal of that decision to a higher court.

[Section 2\(5\) of the Crown Proceedings Act 1947](#) complements the common law immunity of judges by providing that no proceedings in tort shall lie against the Crown (or State) in respect of any acts or omissions by a person while acting in a judicial capacity. The doctrine of judicial immunity in relation to magistrates is slightly nuanced, but provides immunity for all acts in the execution of their duties, save those which are done in bad faith and outside their jurisdiction ([sections 31 and 32 of the Courts Act 2003](#)).

⁸ http://judicialconduct.judiciary.gov.uk/app/uploads/2015/12/OJC_Annual_Report_2009_-_2010.pdf;
http://judicialconduct.judiciary.gov.uk/app/uploads/2015/12/OJC_Annual_Report_2010_-_11.pdf;
http://judicialconduct.judiciary.gov.uk/app/uploads/2015/12/OJC_Annual_Report_2011-2012.pdf;
http://judicialconduct.judiciary.gov.uk/app/uploads/2015/12/Office_for_Judicial_Complaints_Annual_Report_2001_2_-_2013.pdf

Even where a judge causes a person to be detained in contravention of their rights under Article 5 of the European Convention on Human Rights to liberty and security, damages can only be claimed against a Government Minister (usually the Lord Chancellor) rather than against the judge personally.⁹

Judges are not immune from criminal liability for acts carried out in the exercise of their judicial function, such as bribery or misconduct in public office. As a matter of the common law, “if [a] judge has accepted bribes or been in the least degree corrupt, or has perverted the course of justice, he can be punished in the criminal courts.”¹⁰

Scotland

In Scotland, the principle of judicial immunity means that judges have personal immunity from suit for acts and omissions in the exercise of their judicial functions. Long-recognised as a fundamental pillar of judicial independence,¹¹ judges have immunity from civil liability for damages in respect of acts they carry out in performing their functions, though these are not absolute. For example, they cannot be sued for defamation for speech about parties and witnesses during a court hearing “unless it can be demonstrated....that the words used had no connection with the case in hand.”¹² As in England and Wales, the principle of judicial immunity is a matter of common law and is complemented by section 2(5) of the Crown Proceedings Act 1947.

Judges in the appeal courts, the Court of Session and the High Court of Judiciary, have complete immunity in respect of acts performed in their judicial capacity.¹³ This is also understood to be the case for sheriffs principal and sheriffs, in the lower criminal courts.¹⁴ Magistrates in the lower civil courts (such as justices of the peace) enjoy immunity under [section 170\(1\) of the Criminal Procedure \(Scotland\) Act 1995](#), which provides that magistrates are generally not liable for damages in respect of any proceedings unless the person suing suffered imprisonment as a consequence of their act; and where the proceedings were quashed and the person suing establishes that the action taken by the magistrate was malicious and without probable cause.

As in England and Wales, judges in Scotland are not immune from criminal liability for certain acts such as bribery when carried out in the exercise of their functions.

6. Please provide detailed information, including disaggregated data on the number of judges that have been subject to civil/criminal liability proceedings in the last ten years. How many of them were found liable for judicial errors? What was the outcome of these proceedings?

To protect judicial independence, judicial office holders have immunity from civil liability (as outlined above) for any actions in the exercise of their judicial functions.

⁹ Section 9 of the Human Rights Act 1998.

¹⁰ *Per* Lord Denning, *Sirros v Moore* [1975] QB 118.

¹¹ *Stair Institutions* IV, 1,5.

¹² *Per* Lord Moncrieff, *Primrose v Waterston* (1902) 4 F 783 at 793.

¹³ *McCreadie v Thomson* 1907 SC 1176 at 1182.

¹⁴ *Harvey v Dice* (1876) 4 R 265; *Russell v Dickson* 1997 SC 269.

In the timescale available for preparing this response, we have not been able to identify whether in the last ten years there have been any criminal proceedings concerning the exercise of judicial functions.

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