

Subsidiary Legislation made under s.39.

Judicial Officers (Complaints) Regulations 2016

LN.2016/062

Commencement **24.3.2016**

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COMPLAINTS RELATING TO HOLDERS OF SENIOR JUDICIAL OFFICE.

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COMPLAINTS RELATING TO HOLDERS OF JUNIOR JUDICIAL OFFICE.

2007-26

Judicial Service

2016/062

Judicial Officers (Complaints) Regulations 2016

In exercise of the powers conferred upon it by section 39 of the Judicial Service Act 2007 and all other enabling powers, and with the agreement of the Minister with responsibility for Justice, the Judicial Service Commission has made the following regulations—

Title and commencement.

1. These regulations may be cited as the Judicial Officers (Complaints) Regulations 2016 and shall come into force on publication in the Gazette.

Interpretation.

2. In these regulations—

“the Act” means the Judicial Service Act 2007;

“business day” means any day except Saturday, Sunday and public holidays;

“complaint” means any complaint about the inability or misbehaviour of a holder of judicial office’;

“junior judicial office” and “senior judicial office” have the same meanings as in the Act; and

“President” means the President of the Court of Appeal.

Complaints officer.

3.(1) The Judicial Service Commission shall appoint a person (to be accessed via the Supreme Court Registry) to be the complaints officer for the purposes of these regulations.

(2) A complaint relating to a holder of a judicial office must be addressed to the complaints officer.

(3) The complaints officer may undertake such enquiries as are necessary to perform his functions under these regulations including but not limited to making requests for information from the complainant and the subject of the complaint.

(4) A reply by a complainant, or by the subject of a complaint, to a request made by the complaints officer must be made within 15 business days of such request and in default of the receipt of such reply the complaints officer may deal with the complaint as he sees fit.

Complaints relating to holders of senior judicial office.

4. Schedule 1 to these regulations shall apply to complaints relating to holders of senior judicial office.

Complaints relating to holders of junior judicial office.

5. Schedule 2 to these regulations shall apply to complaints relating to holders of junior judicial office.

Disclosure of Information.

6.(1) The Judicial Service Commission, or the complaints officer as the case may be, shall inform the complainant whether his complaint has been upheld or dismissed, and what if any disciplinary action has been proposed.

(2) The Judicial Service Commission may disclose information about disciplinary proceedings or the taking of disciplinary action against an identified or identifiable subject of a complaint to anyone to whom the Judicial Service Commission considers it necessary to give such information.

(3) Public disclosure about disciplinary action may be made by the Judicial Service Commission where it considers such disclosure necessary to maintain confidence in the judiciary.

(4) Unless the Judicial Service Commission directs otherwise all proceedings arising under these regulations shall be held in private.

Treatment of transitional complaints.

7. These regulations apply to any complaint made before the coming into force of these regulations which has not been withdrawn, dismissed or determined.

Costs.

8. These regulations contain no power to award costs, and any costs incurred as a result of action taken pursuant to these regulations will not be recoverable.

SCHEDULE 1**COMPLAINTS RELATING TO HOLDERS OF SENIOR JUDICIAL OFFICE.****Time limits within which a complaint must be made.**

1.(1) A complaint must be made within one calendar month of the event or matter complained of, but a complaint relating to a continuing state of affairs may be made at any time while that state of affairs continues or within one calendar month of it ending.

(2) Subject to subparagraph (3), any complaint made after the expiration of those time limits must be dismissed by the complaints officer.

(3) The—

- (a) complaints officer;
- (b) Chief Justice; or
- (c) President

may extend the time for making a complaint, whether or not the time limit has expired, if he considers that there is good reason to do so, but where a complaint has been dismissed by the complaints officer pursuant to (2) above any application for an extension of time must be made to the Chief Justice or the President, within 10 business days of the dismissal.

Form of complaint.

2. A complaint must be made in writing unless the complaints officer considers it reasonable to accept a complaint in another form.

Withdrawal of complaint.

3.(1) A complainant may withdraw a complaint at any time, and it will be treated as withdrawn if the complainant indicates that he does not want it, or any further information he has provided, to be disclosed to the subject of a complaint.

(2) If a complaint is withdrawn, or treated as withdrawn, the complaints officer shall provide a copy of the complaint to the Judicial Service Commission and, if the Judicial Service Commission considers that it should be further considered, the Judicial Service Commission may direct that it shall be further considered under these regulations.

Referral of other information for consideration.

4. Where the President, the Chief Justice or the Judicial Service Commission (or a member thereof) receives information from any source which suggests to the recipient that a complaint might be justified, the recipient may refer that information to the complaints officer to be dealt with under these regulations and in such circumstances it shall be deemed, for the purposes of these regulations, the Act and all other purposes, that a complaint has been received by the complaints officer.

Consideration of a complaint by the complaints officer.

5.(1) The complaints officer 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 misbehaviour;
- (c) the action complained of was not done or caused to be done by a holder of senior judicial office;
- (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, or professional conduct in a non-judicial capacity, of a holder of senior judicial office and could not reasonably be considered to affect his ability to hold or to exercise judicial office;
- (j) for any other reason it does not relate to inability or misbehaviour by a holder of senior judicial office.

(2) The complaints officer may not dismiss a complaint under (1)(a) above unless the complainant has been given 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 subject of a complaint, the complaints officer must consider any independent evidence which exists before dismissing the complaint under (1) above, unless to do so would be disproportionate in all the circumstances.

Further consideration of a complaint liable to be dismissed.

6.(1) Where the complaints officer dismisses a complaint under paragraph 5 he shall within 10 business days notify the Judicial Service Commission of such fact and the reason or reasons for the dismissal.

(2) Where the Judicial Service Commission receives a notification under (1) above it may, within one calendar month of receipt of the notification, order that the dismissed complaint be considered further under these regulations if it determines that the complaint is sufficiently serious for further consideration to be necessary.

Referral to a nominated Justice of Appeal or Puisne Judge.

7. Where—

- (a) the complaints officer has considered a complaint and it has not been dismissed by him; or
- (b) the complaints officer is informed that a complaint is the subject of an order under paragraph 6(2),

the complaints officer must request that a judge be nominated in accordance with paragraph 8 and on being informed of the identity of the nominated judge the complaints officer must refer the complaint to him.

Nomination of a judge.

8.(1) A judge shall be nominated by the President or the Chief Justice in accordance with this paragraph.

(2) The nominated judge must be a judicial office holder or a former judicial office holder, of the same or higher judicial rank in Gibraltar or in the United Kingdom than the subject of the complaint,

(3) The President or the Chief Justice may nominate a different judge to deal with different complaints or with different aspects of the same complaint.

(4) In relation to a former judicial office holder, reference to his rank means the rank he held immediately before he ceased to hold judicial office

Functions of a nominated judge.

9.(1) Subject to the provisions of section 36 of the Act, regarding the functions of the Governor, and section 37(3) of the Act, regarding the powers of the President, the nominated judge shall advise the Judicial Service Commission—

- (a) whether the complaint 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 recommended; or
- (d) whether, in addition to or without a judicial investigation, some other action should be taken.

(2) Before advising in accordance with paragraph (b), (c) or (d) of (1) above the nominated judge must ensure that the subject of a complaint has had an opportunity to respond in writing to the complaint.

Consideration by the Judicial Service Commission.

10. The Judicial Service Commission shall, after considering any advice from the nominated judge and any representations from the subject of the complaint, decide—

- (a) that the complaint is unsubstantiated and is dismissed;
- (b) that the complaint is substantiated wholly or in part but does not require further action and is dismissed;
- (c) to refer the matter to the President to exercise his powers under section 37(3) of the Act, after consultation with the Judicial Service Commission; or
- (d) to tender advice in accordance with section 36(2) of the Act.

Procedure of investigation by an investigating judge.

11.(1) If the Judicial Service Commission refers the matter to the President under paragraph 10(c), the President may appoint a judicial office holder or a former judicial office holder, of

the same or higher judicial rank in Gibraltar or in the United Kingdom than the subject of the complaint, as an investigating judge. Such investigating judge must—

- (a) decide how to conduct the investigation;
- (b) notify the subject of a complaint and any complainant of his proposals for the conduct of the investigation, and whether oral evidence will be taken, and advise them that he will receive written representations in relation to his proposals;
- (c) invite the subject of a complaint to provide written or oral evidence in response to the complaint and in response to any further evidence or submissions that the investigating judge may receive.

(2) The investigating judge may invite the complainant, and any other person whom he considers may be able to assist, to provide written or oral evidence and submissions.

(3) All evidence and submissions must be provided to the investigating judge within such period as he may determine, and any oral evidence must be recorded.

(4) Where the investigating judge considers it necessary to disclose material obtained during the course of an investigation to any person other than the subject of the complaint, he must first give the person who provided the material and the subject of the complaint the opportunity to make representations about the proposed disclosure and any representations must be made within such reasonable period as the investigating judge may determine.

(5) The terms of reference for the investigation by the investigating judge shall be such as the President may decide.

(6) The investigating judge may ask the President to amend his terms of reference, and any changes shall be such as the President may decide.

(7) In relation to a former judicial office holder, reference to his rank means the rank he held immediately before he ceased to hold judicial office

Report of investigating judge.

12.(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 a complaint who must be given the opportunity to make representations about it.

(3) The investigating judge may show a draft of his report, or of any part of it or a summary thereof, to the complainant or any other person who may be given the opportunity to make representations about it.

(4) The investigating judge may set the period within which any representations must be made.

(5) After considering any representations he may receive the investigating judge must—

- (a) complete his report and submit it to the President, with details of any requested changes he has not made;
- (b) send a copy of his report to the subject of the complaint;
- (c) send a copy of his report or of the relevant part of his report to the complainant.

(6) The President, after considering the report and consulting the Judicial Service Commission, may exercise his powers under section 37(3) of the Act.

(7) If the Judicial Service Commission, having been consulted by the President, considers that the report gives rise to matters which should be referred to the Governor under section 36(2), it shall do so in accordance with the Act.

Notification of proposed disciplinary action and final decision.

13.(1) Where the Judicial Service Commission or the President (as the case may be) proposes to take disciplinary action under paragraph 12 it or he (as the case may be) must notify the subject of the complaint of the proposal and allow him the opportunity to make representations, in writing, within 21 days.

(2) Having considered such representations that may be made the Judicial Service Commission or the President (as the case may be) must make its final decision and notify the subject of the complaint of that decision.

Deferral of consideration of a report.

14.(1) Where a complaint arises out of proceedings in which a complainant is involved, or in which the subject of a complaint sits, the complaints officer may defer consideration of the complaint until he is notified that the court proceedings have been concluded.

(2) Where the complaint arises out of proceedings in which the subject of a complaint is a party the Judicial Service Commission may defer consideration of the complaint until the complaints officer is notified that the court proceedings have been concluded.

(3) Where the complaint relates to disciplinary proceedings by any professional body the Judicial Service Commission may defer consideration of the complaint until the complaints officer is notified that the disciplinary proceedings have been concluded.

(4) Where the Judicial Service Commission defers consideration of a complaint under (3) above it may draw the complaint to the attention of the professional body responsible for the disciplinary proceedings.

Notification of Deferral.

15.(1) When a subject of a complaint has been notified that he is the subject of a complaint, or otherwise the subject of disciplinary proceedings, the complaints officer must inform him of any decision to defer consideration of the complaint.

(2) When consideration of the complaint has been deferred, and the complainant has not withdrawn his complaint, the complaints officer must notify the complainant of the decision to defer consideration of the complaint.

Revival of a deferred complaint.

16. When consideration of a complaint has been deferred under paragraph 14, and is revived on the conclusion of any proceedings to which that paragraph refers, the subject matter of the complaint shall be limited to that which formed the subject matter of the original complaint unless the Judicial Service Commission decides otherwise.

SCHEDULE 2

COMPLAINTS RELATING TO HOLDERS OF JUNIOR JUDICIAL OFFICE.**Time limits within which a complaint must be made.**

1.(1) A complaint must be made within one calendar month of the event or matter complained of, but a complaint relating to a continuing state of affairs may be made at any time while that state of affairs continues or within one calendar month of it ending.

(2) Subject to sub-paragraph (3), any complaint made after the expiration of those time limits must be dismissed by the complaints officer.

(3) The—

(a) complaints officer; or

(b) Chief Justice,

may extend the time for making a complaint, whether or not the time limit has expired, if he considers that there is good reason to do so, but where a complaint has been dismissed by the complaints officer pursuant to (2) above any application for an extension of time must be made to the Chief Justice within 10 business days of the dismissal.

Form of complaint.

2. A complaint must be made in writing unless the complaints officer considers it reasonable to accept a complaint in another form.

Withdrawal of complaint.

3.(1) A complainant may withdraw a complaint at any time, and it will be treated as withdrawn if the complainant indicates that he does not want it, or any further information he has provided, to be disclosed to the subject of a complaint.

(2) If a complaint is withdrawn, or treated as withdrawn, the complaints officer shall provide a copy of the complaint to the Judicial Service Commission and, if the Judicial Service Commission considers that it should be further considered, the Judicial Service Commission may direct that it shall be further considered under these regulations.

Referral of other information for consideration.

4. Where the President, the Chief Justice or the Judicial Service Commission (or a member thereof) receives information from any source which suggests to the recipient that a complaint might be justified, the recipient may refer that information to the complaints officer to be dealt with under these regulations and in such circumstances it shall be deemed, for the purposes of these regulations, the Act and all other purposes, that a complaint has been received by the complaints officer.

Consideration of a complaint by the complaints officer.

5.(1) The complaints officer 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 misbehaviour;
- (c) the action complained of was not done or caused to be done by a holder of junior judicial office;
- (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 junior judicial office;
- (i) it is about the private life, or professional conduct in a non-judicial capacity, of a holder of junior judicial office and could not reasonably be considered to affect his ability to hold or to exercise junior judicial office;
- (j) for any other reason it does not relate to inability or misbehaviour by a holder of junior judicial office.

(2) The complaints officer may not dismiss a complaint under (1)(a) above unless the complainant has been given 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 subject of a complaint, the complaints officer must consider any independent evidence which exists before dismissing the complaint under (1) above, unless to do so would be disproportionate in all the circumstances.

Further consideration of a complaint liable to be dismissed.

6.(1) Where the complaints officer dismisses a complaint under paragraph 5 he shall within 10 business days notify the Judicial Service Commission of such fact and the reason or reasons for the dismissal.

(2) Where the Judicial Service Commission receives a notification under (1) above it may, within one calendar month of receipt of the notification, order that the dismissed complaint be considered further under these regulations if it determines that the complaint is sufficiently serious for further consideration to be necessary.

Referral to a nominated Justice of Appeal or Puisne Judge.

7. Where—

- (a) the complaints officer has considered a complaint and it has not been dismissed by him; or
- (b) the complaints officer is informed that a complaint is the subject of an order under paragraph 6(2),

the complaints officer must request that a judge be nominated in accordance with paragraph 8 and on being informed of the identity of the nominated judge the complaints officer must refer the complaint to him.

Nomination of a judge.

8.(1) A judge shall be nominated by the President or the Chief Justice in accordance with this paragraph.

(2) The nominated judge must be a Justice of Appeal, a Puisne Judge, or a former holder of such judicial office, in Gibraltar or in the United Kingdom.

(3) The President or the Chief Justice may nominate a different judge to deal with different complaints or with different aspects of the same complaint.

(4) In relation to a former judicial office holder, reference to his rank means the rank he held immediately before he ceased to hold judicial office

Functions of a nominated judge.

9.(1) The nominated judge shall advise the Judicial Service Commission-

- (a) whether the complaint 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 recommended; or
- (d) whether, in addition to or without a judicial investigation, some other action should be taken.

(2) Before advising in accordance with paragraph (b), (c) or (d) of (1) above the nominated judge must ensure that the subject of a complaint has had an opportunity to respond in writing to the complaint.

Consideration by the Judicial Service Commission.

10. The Judicial Service Commission shall, after considering any advice from the nominated judge-

- (i) if it considers the complaint to be sufficiently serious or complex to require judicial investigation, request that the President or the Chief Justice appoint an Investigating Judge; or
- (ii) deal with the complaint in accordance with paragraph 16.

Nomination of an investigating judge.

11.(1) When a case is to be subject to judicial investigation the President or the Chief Justice shall nominate a judicial office holder or a former judicial office holder to be the investigating judge.

(2) The investigating judge must be of the same or higher judicial rank in Gibraltar or in the United Kingdom than-

- (a) the subject of the complaint; and
- (b) the nominated judge.

(3) In relation to a former judicial office holder, reference to his rank means the rank he held immediately before he ceased to hold judicial office

Terms of reference of investigating judge.

12.(1) The terms of reference for the investigation by the investigating judge shall be such as the Judicial Service Commission may agree.

(2) The investigating judge may ask the Judicial Service Commission to amend his terms of reference, and any changes shall be such as the Judicial Service Commission may agree.

Functions of investigating judge.

13.(1) The investigating judge must advise the Judicial Service Commission—

- (a) as to the facts;
- (b) whether the complaint 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 his terms of reference.

(2) Decisions on facts are to be made on the balance of probabilities.

Procedure of investigation by an investigating judge.

14.(1) The investigating judge must—

- (a) decide how to conduct the investigation;
- (b) notify the subject of a complaint and any complainant of his proposals for the conduct of the investigation, and whether oral evidence will be taken, and advise them that he will receive written representations in relation to his proposals;
- (c) invite the subject of a complaint to provide written or oral evidence in response to the complaint and in response to any further evidence or submissions that the investigating judge may receive.

(2) The investigating judge may invite the complainant, and any other person whom he considers may be able to assist, to provide written or oral evidence and submissions.

(3) All evidence and submissions must be provided to the investigating judge within such period as he may determine, and any oral evidence must be recorded.

(4) Where the investigating judge considers it necessary to disclose material obtained during the course of an investigation to any person other than the subject of the complaint, he must first give the person who provided the material and the subject of the complaint the opportunity to make representations about the proposed disclosure and any representations must be made within such reasonable period as the investigating judge may determine.

Report of investigating judge.

15.(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 a complaint who must be given the opportunity to make representations about it.

(3) The investigating judge may show a draft of his report, or of any part of it, or a summary thereof, to the complainant or any other person who may be given the opportunity to make representations about it.

(4) The investigating judge may set the period within which any representations must be made.

(5) After considering any representations he may receive the investigating judge must—

- (a) complete his report and submit it to the Judicial Service Commission, with details of any requested changes he has not made;
- (b) send a copy of his report to the subject of the complaint;
- (c) send a copy of his report or of the relevant part of his report to the complainant.

Decisions and proposed disciplinary action.

16. Where the Judicial Service Commission has considered advice from a nominated judge or a report from an investigating judge it shall decide that—

- (a) the complaint is unsubstantiated and is dismissed;

- (b) the complaint is substantiated wholly or in part but does not require further action and is dismissed or held in a form which may be used in connection with any future disciplinary proceedings;
- (c) the complaint is substantiated wholly or in part and should be dealt with informally by the President or the Chief Justice or, in relation to a Justice of the Peace, by the Stipendiary Magistrate; or
- (d) the complaint is substantiated wholly or in part and that the Judicial Service Commission will advise the Governor to exercise his power in accordance with section 37(1) of the Act to terminate the appointment and remove from office a junior judicial officer or use some lesser formal disciplinary power.

Notification of proposed disciplinary action and final decision.

17.(1) Where the Judicial Service Commission proposes to advise that any disciplinary action be taken under paragraph 16(c) or (d), it must notify the subject of the complaint of the proposal and allow him the opportunity to make representations in writing within 21 days.

(2) Having considered such representations that may be made the Judicial Service Commission must make its final decision and notify the subject of the complaint of that decision.

Deferral of consideration of a report.

18.(1) Where a complaint arises out of proceedings in which a complainant is involved, or in which the subject of a complaint sits, the complaints officer may defer consideration of the complaint until he is notified that the court proceedings have been concluded.

(2) Where the complaint arises out of proceedings in which the subject of a complaint is a party the Judicial Service Commission may defer consideration of the complaint until the complaints officer is notified that the court proceedings have been concluded.

(3) Where the complaint relates to disciplinary proceedings by any professional body the Judicial Service Commission may defer consideration of the complaint until the complaints officer is notified that the disciplinary proceedings have been concluded.

(4) Where the Judicial Service Commission defers consideration of a complaint under (3) above it may draw the complaint to the attention of the professional body responsible for the disciplinary proceedings.

Notification of Deferral.

19.(1) When a subject of a complaint has been notified that he is the subject of a complaint, or otherwise the subject of disciplinary proceedings, the complaints officer must inform him of any decision to defer consideration of the complaint.

(2) When consideration of the complaint has been deferred, and the complainant has not withdrawn his complaint, the complaints officer must notify the complainant of the decision to defer consideration of the complaint.

Revival of a deferred complaint.

20. When consideration of a complaint has been deferred under paragraph 18, and is revived on the conclusion of any proceedings to which that paragraph refers, the subject matter of the complaint shall be limited to that which formed the subject matter of the original complaint unless the Judicial Service Commission decides otherwise.

Interim Suspension.

21.(1) Subject to the provisions of section 37 of the Act, after a complaint has been received by the complaints officer the Judicial Service Commission may decide to recommend to the Governor the suspension of the subject of a complaint from his judicial office or offices. If it does so it must—

- (a) notify the subject of a complaint of the proposed suspension, the reasons for it and the time when it is proposed that it will come into effect;
- (b) notify the subject of a complaint of the factors that will be taken into account in determining when the suspension will be lifted and invite him to make representations.

(2) The subject of a complaint must make any representations he wishes to make in writing within 21 days.

(3) The Governor, if so advised by the Judicial Service Commission, may suspend the holder of junior judicial office. Such suspension shall have immediate effect notwithstanding that the period set out in (2) above may not have ended.

(4) When the factors identified at (1)(b) above become operative, or any other matter arises which the Judicial Service Commission consider to be relevant, the Judicial Service Commission must—

- (a) decide whether it is appropriate to continue the suspension;

- (b) notify the subject of a complaint of their decision, and of the reasons for that decision; and
 - (c) invite the subject of a complaint to make representations.
- (5) The subject of a complaint must then make any representations he chooses to make in writing within 21 days.
- (6) The Governor shall then act on the advice of the Judicial Service Commission.