



Making a complaint about judicial misconduct

The Ministry of Justice Complaint's Process

Part I Appeals

Part II Complaints about a District, Circuit or High Court Judge

Part III The Role of the Judicial Appointments & Conduct Ombudsman

It can be confusing to know what to do if you feel that you have been treated unfairly or discourteously in court. The first question you must ask yourself is whether or not you are unhappy with the judgment (the order made by the Judge at the end of your case), the Judge's behaviour, or some aspect of proceedings relating to how your case was managed. The answer will help you decide what appropriate course of action to take.

We have written this factsheet to help you be aware of how the Office for Judicial Complaints assist you, and when you should consider appeal as a more appropriate course of action.

Below, you will find a brief outline of which course of action is more appropriate depending on the matters which are concerning you.

- Complaints about a Judge's decision in court, matters/evidence they considered when making a judgment, the Judge's interpretation of the law, the way the case was managed. *You should consider appeal to a higher court.*
- Complaints about a District, Circuit, or High Court Judge's behaviour/conduct in court. *You would make a complaint to the Office for Judicial Complaints.*
- Complaints about Court Staff. *Complaints should be address to HM Court Service.*

The current complaints process run by the Ministry of Justice - including the work of the Office for Judicial Complaint (OJC) and the Judicial Appointments and Conduct Ombudsman - does not allow any way to complain about poor judicial discretion, poor decision making or unfairness regarding how a case is managed. If there are instances during proceedings where a Judge said things that were unreasonable, unfair or incorrect in law, the Ministry of Justice will not consider a complaint made about such things.

Under their complaints procedures, the only route to address such matters is by appealing to a higher court, but an appeal will only be considered if you disagree with the final judgment. Appeals are costly, and may cost tens of thousands of pounds. An ability to have a complaint heard is dependent on your level of wealth. For many, this results in there being no way to raise the issue of poor standards within the Courts.



The Ministry of Justice (MoJ) needs to reconsider why only 2 complaints which related to the mainstream judiciary (out of 938 complaints) in 2006/7 resulted in any action being taken against a Judge. There is a growing perception that the Office for Judicial Complaint was established to show that all is well within the Courts rather than to pinpoint areas of improvement within a service which faces mounting criticism within the mainstream media. If the MoJ thought that the OJC would improve its credibility, so far, that office is failing.

The guidelines that the OJC must adhere to are set out in The Judicial Discipline (Prescribed Procedures) Regulations 2006. These guidelines need to be reconsidered to not only include matters related to misconduct, but matters related to judicial decision making. The boundaries between a poor decision and unfairness, bias and discretion are too easily blurred and allow the MoJ to dismiss out of hand complaints that need to be taken forward to improve service standards within the Judiciary.

Poor training or a lack of knowledge of authorities set by higher Courts can only be uncovered and addressed if a case reaches the Appeal Court. Due to this limitation and the current secrecy within family law, too many cases of poor judicial decision making remain hidden and unaddressed.

If you experienced bullying, discrimination, or any other misconduct in court, you should complain. If you are dissatisfied with how the Office for Judicial Complaints handle your complaint, contact the Judicial Appointments and Conduct Ombudsman and ask him to investigate. Copy your complaint into your local Member of Parliament so that they are aware of what is happening within the Courts.



Part I: Appeals

This factsheet is primarily intended to provide information for parents, foster parents, step-parents, grandparents and other carers who wish to consider making a complaint about judicial misconduct during their court case. If your intention is to overturn a Judge's decision and you believe you have justifiable grounds to do so, the Office for Judicial Complaint will not be able to help with this. Matters relating to judicial decisions and judicial discretion (decisions which are within the Judge's authority to make) can only be challenged by making an appeal to a higher court.

An appeal will be rejected if the errors which were made during the court case are unlikely to have altered the judgment that was made. For example, if the Judge was rude, did not follow certain court rules, did not consider all of the evidence, but the type of order made could be considered to be in the children's best interests, it is unlikely that your appeal would be considered or ultimately be successful. To put it more succinctly, if the Judge made the right decision for the wrong reasons, the judgment will not be changed.

There is no point in approaching the Court of Appeal if you are unhappy with an interim order. Judges make interim orders as a temporary measure while matters are still being investigated or considered and are not the final decision of the Court. In relation to a judgment made at a final hearing, the Court of Appeal may consider the following matters to be relevant if these would have led the Judge to make an incorrect judgment.

If the Judge:

- made a mistake in law;
- took into account some factor which he/she ought not to have taken into account;
- did not take into account some factor which he/she ought to have taken into account;
- gave no weight or insufficient weight to matters that they should have taken into account;
- failed to give adequate consideration to the emotional needs of the child or other parts of the Welfare Checklist;
- misdirected him/herself (e.g. incorrectly interpreted or quoted case law, court rules, judicial guidance etc);
- was misled;
- there was no evidence on which a finding could be based.

In family law, a Judge is granted considerable independent discretion when deciding what the outcome of your case should be. If you wish to appeal the judgment, it is not enough to disagree with a Judge's decision. You need to show that no rational Judge upon hearing the same evidence could reach the same verdict. Be specific as to why the Judge was wrong to come to the decision that he/she did.



If you intend to appeal and need assistance and help to understand the implications and processes involved, we recommend you seek legal advice from a solicitor or contact a charity such as [Families Need Fathers](#) (who also assist mothers and grandparents) who can put you in contact with a McKenzie Friend (lay legal advisor) who has experience of appeals.

If you would like further information on how to make an appeal, we suggest you visit the HM Court Service website for specific guidance using the links below.

Time Limits for Appeal

You can ask the Judge for the right to appeal at the end of the hearing when the judgment was made. If permission is refused, or you did not ask for the right to appeal at that hearing, you only have three weeks (21 days) to lodge your 'appellant's notice' (form N161 from HM Court Service) with a higher court.

Notes: Further Guidance on appealing a Judge's decision

Information is available via the HM Court Service website including:

['I want to make an appeal to the High Court or County Court'](#)

['Guidance Notes on completing the appellant's notice'](#)

['Form N161 – Appellant's Notice'](#)

['Important notes for the Respondent'](#)

The Welfare Checklist is set out in section 1(3) of the Children Act 1989:

[The Children Act 1989](#)



Part II: Complaints about a District, Circuit or High Court Judge

The Office for Judicial Complaints (OJC) was established on 3rd April 2006 to investigate complaints related to misconduct (unacceptable behaviour) by judicial office holders. The department reports to the Lord Chief Justice (the head of the judiciary in England and Wales) and the Lord Chancellor (a member of the Cabinet who is responsible for the efficient running and independence of the courts).

What is a judicial office holder?

A judicial office holder is a Judge, Magistrate, Coroner, or Tribunal Member. Complaints about a Magistrate should not be directed to the OJC but to the Magistrates' Local Advisory Committee (*not covered in this factsheet as the procedures for complaints about Magistrates differ*).

Is there a time limit on making a complaint?

Yes. Complaints must be made within 12 months of the date when the incident occurred.

It is possible (although by no means guaranteed) that this time limit may be extended if it is agreed that there are good reasons to do so.

It is worth being aware that the OJC cannot consider a complaint until your court case is over. You must wait for your case and any appeal to end, but you can still inform the OJC of your intention to make a complaint at any time.

If your complaint is delayed due to the length of time it takes for you to get a final judgment or for your appeal to be heard, you can later argue (under Regulation 4(2) of The Judicial Discipline (Prescribed Procedures) Rules 2006) that the 12 month limit should date from when the final hearing or appeal (if there was one) concluded.

How do I make my complaint to the OJC?

You should make a complaint in writing and send it by post or email to the Office for Judicial Complaints. Make sure you include the following points:

- your name, address and telephone number;
- the name of the Judge (if known);
- the court where the incident took place;
- the case number(s) and the date of the hearing(s) in question;
- specific details regarding the grounds for your complaint.

Tips for correspondence with the OJC

- Always ask that the OJC acknowledges receipt of your letter or email.



- If you phone the OJC, make a note of what was discussed and then record this in a letter and send it to the OJC so you (and they) have a record of what was said.
- Keep a copy of whatever you write, and print and save emails (both sent and received).

Do I need to obtain or include a copy of the court transcript to support my complaint?

No. When you were at court, what was said during the proceedings should have been recorded on an audio tape (although on occasion the tape recorder isn't working!). If the OJC agrees to investigate your complaint, then they are likely to ask the Court for a copy of the court tapes to assist them in considering what was said during proceedings. A transcript (a typed version of the tapes) shouldn't be necessary.

Transcripts can cost several hundred pounds to obtain, and if you want to confirm what was said during the hearing, consider asking the court administrative staff if they would let you come into the court building to listen to the tapes.

What matters will the OJC investigate?

The OJC will investigate complaints related to:

- the way in which the Judge conducted him/herself (behaved);
- the comments they made to you or about you;
- the way in which their comments were made;
- the Judge having made racist, sexist or insulting remarks.

Examples which may be considered to be misconduct include a Judge having:

- shouted at you;
- made unreasonable threats;
- otherwise bullied you;
- suggested you are less capable of child care due to your gender;
- Made personal comments about you which were unfair, unreasonable or insulting e.g.

I suspect you are possessive because you wish to see your child for more than two hours a fortnight.

I suspect you are a bully because you've brought this action.

If you are acting as a Litigant in Person, the Judge should clearly and accurately explain the law and procedures to you, and not apply excessive pressure on you to settle when otherwise you would not.



As in all walks of public life, Judges may not make unreasonable assumptions or draw undue inferences about you based on gender, race, religion, age and sexual orientation. Judges are also required to protect you from similar treatment by the opposition's representatives, particularly if you are not represented by a solicitor or barrister.

Judges should be respectful and courteous towards you. They should not unreasonably raise their voice, talk you down if you are trying to make a point or unreasonably threaten you.

Matters the OJC will not investigate

The OJC cannot deal with any complaints about a Judge's decision during proceedings or about how they handled a case or reached their decision unless an issue of misconduct is involved (see Regulation 14(1)(b) on the following page). If there is no issue of misconduct, your only option is to appeal. Again, please bear in mind that if you are seeking to have a judgment overturned, you can only do this by making an appeal to a higher court (refer to Part I).

In its first year the OJC received 1,674 complaints of which 51% related to judicial decisions and were therefore dismissed out of hand.

Judicial Regulations relating to matters which may or may not be investigated

The Judicial Discipline (Prescribed Procedures) Regulations 2006 (Regulation 14)

14. —(1) Unless there are reasons why it believes that a complaint should be investigated, the Office for Judicial Complaints 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 misconduct;

(c) the action complained of was not done or caused to be done by a judicial office holder;

(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 of a judicial office holder and could not reasonably be considered to affect his suitability to hold judicial office;

(j) it is about the professional conduct in a non-judicial capacity of a judicial office holder and could not reasonably be considered to affect his suitability to hold judicial office;

(k) for any other reason it does not relate to misconduct by a judicial office holder.

(2) The Office for Judicial Complaints may not dismiss a complaint under paragraph (1)(a) unless it has given the complainant a reasonable opportunity to provide adequate particulars of the complaint.

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Most of the above points are fairly self explanatory, but worth considering is that if your complaint comes across as simply being intended to cause trouble without raising any matters of substance (e.g. being vexatious), your complaint will be dismissed. Try to use objective and unemotional language.

What do I do if the OJC dismiss my complaint?

If the OJC refuses to consider your complaint, you have a number of options. First, consider the reasons that the OJC gave you (they should explain why they will not investigate your complaint). If you consider that regardless of OJC's decision to dismiss your complaint it is a serious enough matter to warrant investigation, ask (in writing) for the complaint to be referred to the Lord Chancellor and Lord Chief Justice and that they allow the investigation to proceed.

Within the Regulations, there is a provision for this under regulation 15.

The Judicial Discipline (Prescribed Procedures) Regulations 2006 (Regulation 15)

15. But the Lord Chancellor and the Lord Chief Justice, or either of them, may determine that a complaint which has been dismissed by the Office for Judicial Complaints or which the Office for Judicial Complaints is minded to dismiss under regulation 14(1) shall nevertheless be subject to further consideration under these regulations where the complaint is sufficiently serious for further consideration to be necessary.

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If this step isn't successful and you remain dissatisfied, you can consider elevating your complaint to the Judicial Ombudsman (see Part III).

Once your complaint has been made, the OJC will write back to you setting out the matters which they will investigate. They should also include a list of matters, statements and questions which they intend to put to the Judge who you are complaining about. Make sure this accurately reflects your complaint, and that your complaint hasn't been watered down, softened, or otherwise been made ambiguous and that important parts haven't been left out.

If the OJC is not accurately setting out your complaint, write back to them asking that they make appropriate changes. Don't be put off, insist, and if they refuse then you should consider escalating your complaint to the Ombudsman for Judicial Appointments and Conduct.

What happens if the OJC agree that my complaint should be investigated?

The OJC will write to the Judge regarding the matters which they have agreed to investigate and ask the Judge to reply. The OJC may ask for further evidence, whether anyone witnessed the matters you are complaining about, and listen to the tape recordings from the hearing(s) in question.

The OJC may also ask the Lord Chief Justice (with the agreement of the Lord Chancellor) to nominate a Judge to consider your complaint. That nominated Judge must be of at least equal rank to the Judge facing the complaint.

What does the nominated Judge do?

The Nominated Judge considers the matter and then reports back to the Lord Chief Justice and Lord Chancellor making one of the following recommendations:

- that the case should be dismissed and no further action taken.
- that a judicial investigation be carried out, how it should be carried out, and what matters need to be considered.
- that disciplinary action needs to be taken and there is no need for further investigation.
- that some other action needs to be taken, either with or without further investigation or disciplinary action.

If a Judicial Investigation is required, the Lord Chief Justice and Lord Chancellor then appoint a Judge to carry out the investigation who must be of a higher rank than the one under investigation.

What does the investigating Judge do?

The Investigating Judge reports back to the Lord Chief Justice and Lord Chancellor:

- setting out the facts of the case;



- whether the case is substantiated, or not;
- whether disciplinary action should be taken, and what disciplinary action should be taken;
- reports on any other matters which were included in their terms of reference.

While the Investigating Judge decides how the investigation should be conducted, some procedures exist which say what should be included.

- Both the person making the complaint and the Judge being investigated must be made aware of the Investigating Judge's proposals as to how the investigation should be conducted and if they are required to provide any further evidence or provide oral evidence in person. This must be done within 10 working days of the Investigating Judge's request.
- Any oral evidence must be recorded in either a transcript or via a tape recording.
- If you are invited to give oral evidence, the Judge being investigated will be invited to reply to what you have said within ten working days of being asked to do so.
- If the Investigating Judge wishes to show evidence obtained during the investigation to anyone other than the subject of the disciplinary proceedings, he/she must first invite the person who provided the evidence and the Judge under investigation to make representations about the proposed disclosure. Again, the timescale for this is within ten working days of the intention to disclose the evidence.

After concluding the investigation, the Investigating Judge prepares a report for the Lord Chief Justice and Lord Chancellor.

The Report by the Investigating Judge

Subject to any instructions by the Lord Chief Justice and Lord Chancellor when the Judge was nominated, the Investigating Judge may decide the form and content of their report.

A draft of the report must be given to both the person who made the complaint and the Judge about whom the complaint was made. Both must be invited to make representations about the contents of the report. The draft report may be disclosed in full, in part, or in the form of a summary. Any representations must be made back to the Investigating Judge within ten working days, and once these have been considered, the report must be completed and submitted to the Lords Chief Justice and Chancellor along with details of any requested change that has not been made.

A copy of the report should also be sent to the subject of the disciplinary proceedings and any other individual who was asked to make representations during the investigation (including the person who made the complaint).



Both the draft report and the final report must omit information where its disclosure would be counter to restrictions set out in section 139 of the Constitutional Reform Act 2005.

What will the Lord Chief Justice and Lord Chancellor do?

Depending on the recommendations contained within the report the Lord Chief Justice and Lord Chancellor may:

- Decide that all or part of the complaint is unsubstantiated and dismissed and no further action is required;
- If the case is substantiated, all or in part, and should be dealt with by the Lord Chief Justice who may discipline the Judge in question or the Lord Chancellor who may remove or seek to remove the Judge from office;
- The case may be referred by them to a review body and they must then act upon the findings and recommendations of the review body;
- If the Lord Chief Justice and Lord Chancellor cannot agree on what should be done, the case is then dismissed.

What do I do if I disagree with the way my complaint was handled?

You can consider making a complaint to the Judicial Appointments & Conduct Ombudsman, but only after you have made a complaint to the OJC directly about how they handled your case.

Notes:

Contact Details for The Office For Judicial Complaints

The Office for Judicial Complaints

4th Floor, Clive House

Petty France

London SW1H 9HD

Tel: 020 7189 2937

Fax: 020 7189 2936

Minicom: 020 7189 2941

Email: customer@ojc.gsi.gov.uk

Website: www.judicialcomplaints.gov.uk



Part III: The Role of the Judicial Appointments and Conduct Ombudsman (JACO)

What does the JACO do?

Among other duties, the Judicial Appointments & Conduct Ombudsman considers complaints from members of the public or Judges who are unhappy with some aspect of the handling of a complaint by Office for Judicial Complaints, the Lord Chancellor, the Lord Chief Justice or a Magistrates' Advisory Committee.

Is the JACO independent of the Judiciary, the Ministry of Justice, and Government?

Yes.

Does the Judicial Ombudsman investigate complaints about Judges or the decisions that Judges made?

No. He only investigates how complaints were handled.

When can I make a complaint to the JACO?

You can only make a complaint to the JACO once your original complaint to the Office for Judicial Complaints, Magistrates Local Advisory Committee have concluded their own investigation unless your complaint about them relates to delays.

What type of complaints does the JACO investigate?

The JACO can investigate whether the OJC or Magistrates Local Advisory Committee:

- took too long to carry out their investigation;
- did not take your complaint seriously;
- were rude to you;
- were perceived to be biased in favour of the Judge;
- did not follow their published procedures correctly;
- did not deal with all aspects of your complaint;
- refused to answer your questions.



What can the JACO do if my complaint about the OJC or Magistrates Local Advisory Committee is upheld?

The JACO can:

- Ask them to write to you and apologise;
- Ask that they take action to put the matter right (if practically possible);
- Set aside the decision of the OJC or Magistrates Advisory Committee, which means that your complaint about the Judge or Magistrate has to be looked at again;
- Recommend that the OJC or Magistrates Advisory Committee improves their processes to ensure that similar mistakes are not repeated in the future;
- Propose that you are paid compensation for loss if it appears to the Ombudsman that this loss has been suffered as a direct result of the poor handling of your complaint.

For more information about how to make a complaint to the Judicial Appointments and Conduct Ombudsman, follow the link to the [JACO – How to Complain Leaflet](#) which provides you with all the information you will need.

After having read that leaflet, you may wish to refer to the [Constitutional Reform Act 2005](#) which is referred to in their documentation.

Notes:

Contact Details for The Judicial Appointments and Conduct Ombudsman

Write to:

Office of the Judicial Appointments and Conduct Ombudsman
8th Floor
Millbank Tower
Millbank
London
SW1P 4QP

Telephone: 020 7217 4505

Fax: 020 7217 4262

Email: headoffice@jaco.gsi.gov.uk

Website: www.judicialombudsman.gov.uk