

PROTOCOL ON JUDICIAL DISCIPLINE

1. The Lord Chief Justice is responsible, as President of the Courts of Northern Ireland and Head of the Judiciary, for taking any disciplinary action against Lord Justices of Appeal, High Court Judges and listed judicial office holders in Northern Ireland¹. In this document all those covered will be referred to as “members of the judiciary”. 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. Complaints and possible disciplinary matters will be investigated in accordance with the Lord Chief Justice’s Code of Practice on Complaints. This Protocol and the Statement of Ethics seek to build upon the Terms and Conditions of Service accepted by members of the judiciary when assuming office. They do not seek to replace these.

Procedure

2. There are a number of circumstances in which the Lord Chief Justice may take disciplinary action:

- As a result of a complaint against a member of the judiciary being upheld;
- Where it is brought to the Lord Chief Justice’s attention that a member of the judiciary may have acted inappropriately², 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;
- 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.

3. 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).

Suspension

4. A judicial office holder may only be suspended where a removals tribunal has been convened in accordance with section 135 of the

¹ The judicial office holders to which this protocol applies are listed in Annex A.

² Where the matter is subject to criminal proceedings, any disciplinary action will ordinarily follow the conclusion of these proceedings.

Constitutional Reform Act 2005. The Prime Minister may suspend a Lord Justice of Appeal or High Court Judge, with the agreement of the Lord Chief Justice, where the Prime Minister and Lord Chancellor are considering the making of motions for the presentation of an address to Her Majesty The Queen. The remaining listed judicial office holders may be suspended by the Lord Chancellor where a removals tribunal so recommends but this can only take place after consultation with the Lord Chief Justice.

5. In addition, the Lord Chief Justice 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, however, take the form of a restriction in the areas of work to be undertaken, for example, that he or she should not undertake family work etc).

6. 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.

Disciplinary action

7. The Lord Chief Justice, or his delegate³, 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

³ 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.

training aimed at improving the conduct in question. Arrangements may be put in place to facilitate a period of mentoring. As mentioned, where training is required restricted work may be appropriate until this is completed. Supervised work may also be appropriate in certain circumstances;

- Restriction of Service - The Lord Chief Justice may place a restriction on the types of case assigned to the member of the judiciary for a period of time;
- Warning - The Lord Chief Justice may issue the member of the judiciary with a formal warning if his or her conduct is inappropriate but does not merit an official warning. This will be in writing;
- Official Warning - The Lord Chief Justice may inform the member of the judiciary that his or her conduct failed to meet the required standard and may issue a warning, again in writing;
- Final Warning - the Lord Chief Justice may inform the member of the judiciary 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. Again such a warning will be given in writing;
- Referral to a Statutory Removal Tribunal - After a final warning the next step would normally be referral to a removal tribunal. This route may also be taken if the conduct concerned is so serious that the Lord Chief Justice thinks that it merits immediate referral (he will ordinarily seek the views of the member of the judiciary before deciding on such a referral). If, however, there is a conviction for, for example, a serious offence he may decide not to consult the judicial office holder before referring the matter to the removal tribunal. Therefore, if the Lord Chief Justice determines that the member of the judiciary's conduct fell so far short of the required standard that removal may be warranted, he will consult the Lord Chancellor (and, where appropriate, the Prime Minister) and convene a removal tribunal. Depending on the level of member of the judiciary, removal will be by Her Majesty The Queen on address by both Houses of Parliament or by the Lord Chancellor. In either case, a removal tribunal must first consider the case and recommend removal. The removal tribunal will present its recommendations to the Lord Chancellor.

Review of penalty imposed

8. 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.

9. 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 10 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.

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JUDICIAL OFFICE HOLDERS TO WHOM THIS PROTOCOL APPLIES

Lord Justice of Appeal

Judge of the High Court

Temporary judge of the High Court under section 7(3) of the Judicature (Northern Ireland) Act 1978

County court judge

Deputy county court judge

Resident magistrate

Deputy resident magistrate

Coroner

Deputy coroner

Statutory officer (within the meaning of section 70(1) of the Judicature (Northern Ireland) Act 1978)

Deputy for a statutory officer under section 74 of that Act

Temporary additional statutory officer under that section

Chief Social Security Commissioner for Northern Ireland

Social Security Commissioner for Northern Ireland

Deputy Social Security Commissioner for Northern Ireland

Chief Child Support Commissioner for Northern Ireland

Child Support Commissioner for Northern Ireland

Deputy Child Support Commissioner for Northern Ireland

President of appeal tribunals (within the meaning of Chapter 1 of Part 2 of the Social Security (Northern Ireland) Order 1998)

Member of the panel of persons to act as members of such appeal tribunals

Chairman of an Appeal Tribunal for the purposes of the Adoption (Northern Ireland) Order 1987

Member of the panel of persons who may serve as chairmen of the Care Tribunal established by Article 44 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003

President of the Industrial Tribunals and the Fair Employment Tribunal

Acting President of the Industrial Tribunals and the Fair Employment Tribunal under Article 82(6) of the Fair Employment and Treatment (Northern Ireland) Order 1998

Vice-President of the Industrial Tribunals and the Fair Employment Tribunal

Acting Vice-President of the Industrial Tribunals and the Fair Employment Tribunal under Article 82(6) of the Fair Employment and Treatment (Northern Ireland) Order 1998

Member of the panel of chairmen of the Industrial Tribunals

Member of the panel of chairmen of the Fair Employment Tribunal

President of the Lands Tribunal for Northern Ireland

Deputy President of the Lands Tribunal for Northern Ireland under section 3(1) of the Lands Tribunal and Compensation Act (Northern Ireland) 1964

Other member of the Lands Tribunal for Northern Ireland

Temporary member of the Lands Tribunal for Northern Ireland under section 3(2) of the Lands Tribunal and Compensation Act (Northern Ireland) 1964

President of the Special Educational Needs and Disability Tribunal for Northern Ireland

Member of the panel of persons who may serve as chairmen of that Tribunal

Member of the tribunal established under section 91 of the Northern Ireland Act 1998

Member of the Mental Health Review Tribunal for Northern Ireland

Lay magistrate

Member of the panel of persons who may serve as chairmen of a tribunal established for the purposes of the Deregulation (Model Appeal Provisions) Order (Northern Ireland) 1997

Chairman of a Tribunal appointed under paragraph 1(1)(a) of Schedule 3 to the Misuse of Drugs Act 1971 in its application to Northern Ireland

Member of a Tribunal appointed under paragraph 2(1) of the Schedule to the Pensions Appeal Tribunals Act 1943 in its application to Northern Ireland

President or Deputy President of Pensions Appeal Tribunals appointed under paragraph 2B of the Schedule to the Pensions Appeal Tribunals Act 1943 in its application to Northern Ireland

Chairman of the Plant Varieties and Seeds Tribunal for the purpose of proceedings brought before it in Northern Ireland

Member of the panel of persons to act as chairmen of Reinstatement Committees sitting in Northern Ireland (appointed under paragraph 2(1)(a) of Schedule 2 to the Reserve Forces (Safeguard of Employment) Act 1985)

Member of the panel of persons appointed under section 6(1) of the Tribunals and Inquiries Act 1992 to act as chairmen of tribunals that sit in Northern Ireland

Member of the panel of chairmen of VAT Tribunals for Northern Ireland

General Commissioner for a division in Northern Ireland (appointed under section 2 of the Taxes Management Act 1970)