



## **Lord Chief Justice's Office**

### **Complaints about the Conduct of Judicial Office Holders**

**Code of Practice issued by the Lord Chief Justice under  
Section 16 of the Justice (Northern Ireland) Act 2002<sup>1</sup>**

Issued 3<sup>rd</sup> April 2006

Revised 25 January 2008

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<sup>1</sup> See Annex A

## Contents

Foreword	Page 2
Guiding Principles	Page 3
Definitions	Page 4
Scope of the Complaints System	Page 5
Assistance for Complainants	Page 8
Receipts of Complaints	Page 9
Informal Resolution	Page 11
'Less Serious' Complaints	Page 13
'Serious' Complaints	Page 15
Outcomes	Page 20
Confidentiality and Publicity	Page 22
'Whistle Blowing'	Page 23
Complaints Statistics	Page 24
Tribunal Complaints	Page 25
Annex A - Statutory Background	Page 28
Annex B - List of Protected Judicial Offices	Page 29
Annex C - Categorisation of Complaints	Page 33
Annex D - Flow Charts	Page 34
Annex E - Target Times	Page 39
Annex F - Contact Details	Page 41

**Complaints about the Conduct of Judicial Office Holders – Code of Practice issued by the Lord Chief Justice of Northern Ireland, Sir Brian Kerr**

**Foreword**

From 3 April 2006 responsibility for complaints against members of the judiciary as well as Presidents and members of the tribunals passed to me from the Lord Chancellor. I am required by statute to publish this Code of Practice which sets out arrangements for investigating complaints identified in the Code. The attached version is a revision of the first Code reflecting our experience of its operation. Several relatively minor alterations have been made. This new Code will come into effect immediately.

Court users and the public generally are entitled to expect holders of judicial office to maintain high standards of personal conduct. I am confident that members of the judiciary and Presidents and members of tribunals have demonstrated such standards in the past and will continue to do so. But this Code provides for comprehensive procedures to address complaints where there is a lapse in those standards.

I am confident that these new arrangements will work effectively. They will continue to be kept under review, however, and from time to time I may decide to make further changes in light of experience and any comments that I receive. The Code will also need to be reviewed on the devolution of justice as certain Lord Chancellor's functions will transfer to the First Minister and deputy First Minister.

It is important to emphasise that the Code applies only to judicial conduct and not to judicial decisions, the process of reasoning underpinning such decisions and the exercise of judicial functions generally. Such matters may only be challenged through the legal process.

**Brian Kerr  
Royal Courts of Justice  
25 January 2008**

## Guiding Principles

- Complaints will be dealt with fairly and without discrimination or regard to any irrelevant factor.
- Complaints will be dealt with confidentially and efficiently.
- In appropriate cases, the emphasis will be on achieving a speedy and informal resolution.
- Complainants and those complained about will be kept informed of the progress of the complaint and will be notified of the outcome of the complaint in a timely manner.
- Complainants with a disability, whose first language is not English, who have poor literacy skills, or have any other difficulty, will be given such reasonable assistance as is necessary to ensure they are able to participate fully in the complaints process.

## 1. Definitions

The Act – The Justice (Northern Ireland) Act 2002 (as amended).

Complaints Officer – member of staff within the Lord Chief Justice’s Office or the office of a Tribunal President/Chairman responsible for investigating a complaint.

Complaints Tribunal – A tribunal established under the Act to provide advice to the Lord Chief Justice on how to deal with a complaint.

Judicial Office Holder – A person holding any of the protected judicial offices listed in Annex B.

- Judge – A judicial office holder whose office is listed in Part 1 of Annex B.<sup>2</sup>
- Tribunal Member – A judicial office holder whose office is listed in Part 2 of Annex B.<sup>3</sup>

Removal Tribunal – A tribunal established under section 8 of the Act (post-devolution) or under section 135 of the Constitutional Reform Act (pre-devolution) for considering removal of a judicial office holder.

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<sup>2</sup> This includes the president or chairman of a tribunal and members of those tribunals which have no president or chairman.

<sup>3</sup> This includes members of those tribunals which have a president or chairman.

## 2. Scope of the Complaints System

This Code of Practice applies to complaints made from 3<sup>rd</sup> April 2006 against all holders of protected judicial office, as defined in section 2 of the Act.<sup>4</sup> A full list of these offices is included at Annex B. A separate protocol has been developed to govern complaints against the Lord Chief Justice.

The Code is primarily concerned with complaints about the conduct of judicial office holders acting in their official capacity. It should be recognised, however, that the high standards expected of those holding judicial office must be observed in many aspects of their conduct outside their judicial role. Complaints about conduct that occurred when the judicial office holder was not acting in an official capacity might, therefore, be considered.

The principal factor for “outside conduct” will be whether the conduct in question in some way relates to the judicial office; the conduct should fall within one of the following categories:

- Conduct which is likely to bring the judiciary into disrepute.
- Conduct which calls in to question the judicial office holder’s ability to properly administer justice, whether by perception or otherwise.
- Conduct involving an attempt to gain favour by trading on his or her position as a judicial office holder.

Complaints that concern a judicial decision in a case, or the reasoning underpinning such a decision, **cannot** be considered. To safeguard the principle of judicial independence and the effective operation of the justice system, such decisions can only be challenged through established legal

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<sup>4</sup> This Code does not apply where the complaint is made by one judicial office holder against another. The handling of such cases will be determined by the Lord Chief Justice.

procedures. Persons wishing to challenge a judicial decision should seek legal advice on how to do so. It is not the purpose of this Code to provide an alternative or additional appeal mechanism.

It is important that the steps taken to investigate a complaint do not compromise any official court or tribunal proceedings. Therefore, the investigation of a complaint may be delayed where the conduct arose in legal proceedings which are ongoing; determination of the complaint may be delayed where the proceedings are under appeal. The complainant and, where appropriate, the judicial office holder will be kept informed of the position.

If, at any time, it appears that criminal conduct may be involved, the complaints officer will be obliged to inform the police. In such circumstances, investigation of the complaint will be delayed pending the outcome of the criminal investigation and any subsequent proceedings.

Complaints should be made promptly and in any event within one year of the conduct complained of. Where more than one year has passed, the complainant will be asked to provide details of the circumstances leading to the delay in making the complaint before a decision is taken on whether to investigate.

While all complaints are considered to be important and will be treated as such, the Act provides for a particular procedure for complaints that appear to involve ‘a serious allegation of misbehaviour or inability to perform the functions of office, [and] which have a reasonable prospect of being substantiated.’<sup>5</sup> For convenience, such complaints are referred to in this Code as being ‘serious’ and all other complaints are referred to as ‘less serious’.

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<sup>5</sup> Section 16 of the Act – see Annex A.

Where a complainant wishes to remain anonymous, or where a complaint has been withdrawn, it will not be possible to investigate the complaint in accordance with this Code of Practice. However, the Lord Chief Justice may initiate some form of investigation of any matters brought to his attention.

Separate procedures are detailed at page 22 to cover 'whistle-blowing' by a member of court staff or a member of the legal profession.

### **3. Assistance for Complainants**

It is important to ensure that the complaints system is accessible to all members of the community. Therefore, in the case of a complainant with a disability, or whose first language is not English, or who has poor literacy skills, or has any other difficulty, the officer receiving the complaint will provide or obtain such reasonable assistance as is necessary to ensure that the complainant is able to participate fully throughout the complaints process.

In particular, where necessary, assistance will be provided to secure a written statement from the complainant – for example by taking a note of the complaint for the complainant to sign, or by obtaining the services of an interpreter. Assistance may also be provided should the complaint progress to a tribunal – for example by having an interpreter or carer present at the hearing in addition to a representative.

Children and young people may of course make a complaint, although they should do so through an appropriate adult if possible. Reasonable assistance will also be provided to meet the particular needs of young complainants, to ensure they are able to participate fully. Young complainants may be assisted by an appropriate adult at any stage of the process.

#### **4. Receipt of Complaints**

Complaints should be sent to the complaints officer in the Lord Chief Justice's Office - contact details are given at Annex F. Complaints about Tribunal Members may also be sent to the relevant Tribunal President's Office<sup>6</sup>; such complaints will be dealt with in accordance with Section 12. Any complaints received by anyone else should be forwarded directly to the Lord Chief Justice's Office.

Complaints should be submitted in writing. Assistance will be provided where necessary in accordance with Section 3. The complainant will be expected to submit full details of their complaint, together with a note of any supporting evidence.

A file will be opened for each complaint that is received, which will contain a copy of the complaint, all correspondence, and a copy or note of all evidence gathered.

The complaints officer will determine, in accordance with the guidance set out in Section 2, whether the complaint concerns a relevant judicial office holder and relevant judicial conduct. If the complaint is not within the scope of this Code, the complaints officer will inform the complainant and will provide a brief explanation. In the case of complaints that should be dealt with by another body, the complaints officer will endeavour to direct the complainant to that body. For example, the complaint might relate to the advice supplied to the complainant by a solicitor, in which case the complainant might be advised to contact the Law Society.

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<sup>6</sup> The tribunal concerned is required to notify the Lord Chief Justice's Office of all complaints.

On occasion, the same complaint is made repeatedly, or a complaint is made which is clearly vexatious. While all complaints will be considered by the complaints officer, if he or she is satisfied that a complaint falls within either of these categories, it need not be investigated further. The complaints officer will inform the complainant and judicial office holder, as appropriate, and explain why the complaint will not be investigated. The complaints officer will not ordinarily engage in further correspondence on the matter.

If the complaint is within the scope of this Code, the complaints officer will acknowledge receipt of the complaint. The complaints officer will then ascertain whether the Lord Chief Justice considers that the complaint is 'serious'. To enable the Lord Chief Justice to determine whether a complaint is 'serious', the complaints officer may have to conduct some preliminary inquiries. Guidance on the type of complaint that is likely to be considered serious is attached at Annex C. If the complaint is deemed to be serious, the complaints officer will inform the Lord Chancellor's Office or Office of the First Minister and Deputy First Minister and, where relevant, the President of the appropriate Tribunal. If the case is not serious and concerns a tribunal member, the complaint will be passed to the President of the appropriate Tribunal to be handled according to the procedure set out at Section 12 below.

If the complaint is retained by the Lord Chief Justice's Office, the complaints officer will establish whether any proceedings are ongoing or pending which might require investigation of the complaint to be delayed, as noted above. If investigation is to be delayed, the complainant and, where appropriate, the judicial officer holder will be informed of the delay and the reasons for it. When the proceedings are concluded, the complaints officer will contact the complainant and determine whether, in light of the outcome, the complaint still requires to be considered.

## **5. Informal Resolution**

It is beneficial to all concerned to resolve complaints at the earliest stage possible. The process of informal resolution aims to achieve a relatively speedy resolution that is agreeable to both parties, and to minimise the time and effort expended on formal investigation. It is recognised, however, that such a process is not appropriate in all situations. Complaints that are defined as 'serious' will not be dealt with by way of informal resolution. It is envisaged that informal resolution will be suggested for most other complaints. A complaint that would ordinarily be dealt with by way of informal resolution may be formally investigated if the judge in question has a history of similar complaints.

Informal resolution will ordinarily be managed by the complaints officer. The complaints officer will explain the process to the complainant, and determine and manage the complainant's expectations. The complaints officer will then write to the judge concerned and seek his or her views on the complaint and the complainant's expectations. (In sensitive cases the letter will be sent by the Lord Chief Justice). Complaints cannot be resolved informally without both the complainant and the judge agreeing to proceed via this process. Following consideration the judge might feel that an explanation of the reason for his or her conduct, or a full or partial apology, may be issued on his or her behalf. Alternatively the judge may decide that the complaint cannot be resolved in this way or that it is not suitable for informal resolution. If so, the complaint will then be subject to the formal investigation procedure (involving, where practicable, a different complaints officer).

The complainant will be advised in writing of the proposed resolution. If the complainant is dissatisfied, he or she must advise the complaints officer within 10 working days of receipt. The complaints officer will then consider

whether any further steps may be taken to resolve the matter informally or if the matter should be subject to formal investigation. If informal resolution is not possible, then any offer of apology or explanation by the judge will not be taken as an admission of wrongdoing in the formal investigation.

## **6. 'Less Serious' Complaints**

The complaints officer will be responsible for investigating less serious complaints. The complaints officer will consider the complaint and obtain any additional information required from the complainant. Details of the complaint will be sent to the judge concerned, seeking his or her response and, if necessary, requesting specific information.

The complaints officer may also obtain third party witness statements, transcripts, audio recordings and any other evidence that he or she considers relevant and necessary. Not all of these will be available in every case. Depending on the evidence gathered, it may be necessary for the complaints officer to seek further information from either of the parties. It will be necessary, before the investigation is concluded, to ensure that the judge is aware of all of the evidence collected, and that he or she has had an opportunity to provide a fully informed response.

If a response is not received to a request for information from the complainant within the requested time period, the complaints officer will issue a reminder. This will make clear to the complainant that if a response is not received within a further specified time period, the complaint may be treated as withdrawn. Members of the judiciary will also be expected to respond to requests for information in a timely manner.

The complaints officer will prepare a report for the Lord Chief Justice, summarising the complaint, the judge's response, and any additional evidence collected, and enclosing copies of the relevant documents. The Lord Chief Justice may make, or require to be made, any additional inquiries he considers necessary. The Lord Chief Justice or the complaints officer will

notify the complainant and the judge of the decision and any action to be taken. Possible outcomes are set out in Section 8.

If at any point it becomes clear that the complaint should be deemed to be 'serious' the Lord Chief Justice will convene a tribunal to take over investigation of the matter in accordance with the normal procedure for 'serious' complaints (outlined below).

### Review

The parties will have 10 working days from notification of the Lord Chief Justice's decision within which to seek a review. A request for a review should be made in writing to the Lord Chief Justice's Office. The request should include the specific reasons for the request. As part of the review process the other party will be given an opportunity to make representations if the Lord Chief Justice is minded to revise his decision. The Lord Chief Justice may refer the matter to an independent judge of appropriate seniority. The judge may review the handling of the matter, the findings of the investigation and the outcome, and will make recommendations to the Lord Chief Justice. The Lord Chief Justice will notify the parties of his decision.

## 7. 'Serious' Complaints

If the Lord Chief Justice considers that a complaint is within the 'serious' category (see Annex C), it will be referred to a tribunal for it to provide advice on how to deal with the complaint. The parties will be notified and the Lord Chief Justice's Office will convene a complaints tribunal.

The panel to consider the complaint will consist of a lay member and two judicial office holders of at least the seniority set out in the table below. The lay member shall be a person who is not, and has never been, a judicial office holder or professional legal advisor. Persons who have, within the previous five years, been employed by the Northern Ireland Court Service, or another government department in connection with a tribunal, are also ineligible to sit as a lay member of the complaints tribunal. If the complaint arises from proceedings, the judicial members of the complaints tribunal will not have been involved in hearing that case or any appeals.<sup>7</sup> The senior judicial member will chair the panel. The lay member will be selected by the Lord Chief Justice from a panel of persons appointed by him for that purpose. The parties will be notified of the names of the members of the hearing panel and the judicial offices they hold (if any).

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<sup>7</sup> Due to the numbers concerned, it may not always be possible for this to apply to judges of the Court of Appeal.

Complaint Against <sup>8</sup>	Complaints Tribunal Panel
Tribunal Member	County Court Judge Tribunal President/Chairman Lay Member
Tribunal President/Chairman Lay Magistrate Resident Magistrate District Judge Coroner	High Court Judge County Court Judge Lay Member
Social Security Commissioner Child Support Commissioner	Lord Justice of Appeal Chief Commissioner Lay Member
Chief Commissioner County Court Judge Master	Lord Justice of Appeal High Court Judge Lay Member
High Court Judge	Lord Justice of Appeal Second Lord Justice or a Retired Judge (of appropriate tier) Lay member
Lord Justice of Appeal	Lord of Appeal in Ordinary Second Lord of Appeal or a Retired Judge (of appropriate tier) Lay Member

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<sup>8</sup> Those who hold more than one judicial office will be considered on the basis of their most senior post, irrespective of the context in which they received the complaint.

Non-salaried judicial members of the panel will be paid for the period they are engaged by the complaints tribunal as though they were sitting for an equivalent period in the court in which they are or were accustomed to sit. Lay members will be paid for each half day or part thereof during which they are engaged by the tribunal, plus reasonable expenses. Administrative support for the tribunal will be provided by the Lord Chief Justice's Office.

All procedural matters and questions of evidence will be determined by the panel chairman in accordance with the rules of natural justice. In determining the procedure, the chairman must have regard to the following:

- The panel shall examine the papers forwarded by the complaints officer.
- They shall seek further information and supporting material from the complainant, as required, to properly investigate the complaint.
- The panel shall then seek the judicial office holder's response and supporting material.
- The panel may also obtain transcripts, audio recordings, third party witness statements and any other evidence that they consider relevant and necessary.
- If necessary, the panel may seek clarification or further information from either party or any witness.
- The panel may rely on written statements or they may interview parties and/or witnesses and keep a record of their evidence.
- Having collected the necessary evidence the panel will ordinarily conduct a hearing. The panel will fix a date for the hearing and will notify the parties in writing at least 10 working days prior to the hearing.
- If a hearing is considered unnecessary, before preparing their report the panel shall ensure that the judicial office holder is aware of all of

the evidence collected and that he or she has had an opportunity to provide a fully informed response.

- The hearing shall be inquisitorial in nature and the panel may call and question witnesses.
- The parties shall be entitled to attend and shall be provided with an opportunity to make representations. The panel may also invite the parties to put additional relevant and appropriate questions to witnesses.
- Parties may be accompanied by a representative.<sup>9</sup> This person may make representations and ask questions on behalf of the party, but may not answer questions on behalf of the party.
- The complaints tribunal may adjourn if the panel consider it necessary for any reason. The panel may, however, proceed in the absence of any party or witness, provided that person was notified of the hearing in accordance with Annex E of the Code of Practice.

The judicial office holder and the complainant will be expected to comply with any request to provide information or to attend a hearing, and any failure to do so may be taken into account in determining how to dispose of the complaint.

All decisions of the panel will be by simple majority. Differences in opinion as to the facts of the case or the recommendation may be reflected in their report if agreement cannot be reached.

The complaints tribunal will prepare a report summarising its findings, detailing any additional evidence, and making a recommendation as to disposal (including the reasoning for its decision). The report will be sent to the Lord Chief Justice. The Lord Chief Justice will consider the

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<sup>9</sup> The Tribunal has no authority to make payments or direct that payments be made to cover the cost of representation.

recommendations. He may direct the Tribunal to make any additional inquiries he considers necessary.

### Review

The Lord Chief Justice will automatically invite the parties to comment on the Tribunal's report. The parties will have 10 working days to submit comments in writing. In reaching his final decision, the Lord Chief Justice will have regard to any comments received.

The Lord Chief Justice will notify the complainant and the judicial office holder of the decision and any action to be taken. The Lord Chancellor or Office of the First Minister and Deputy First Minister and, where appropriate the Tribunal President, will also be informed.

## 8. Outcomes

The Lord Chief Justice's decision will set out whether or how far the complaint has been found to be substantiated, whether or how far the judicial office holder's conduct fell short of the required standard, and the outcome. In deciding what action to take, the judge's previous conduct may be taken into consideration. A record will be kept of any sanctions imposed. Only those complaints which are upheld will be recorded on the judge's personal complaints file.

In addition to an explanation and/or apology, one or more of the following may apply:

- No Further Action – this will apply where the complaint is found to be unsubstantiated and the judicial office holder's conduct met the required standard or where the case is not proved.
- Advice/Training/Mentoring – the judicial office holder will be given 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.
- Warning – the Lord Chief Justice will issue the judicial office holder with a formal written warning if his or her conduct is inappropriate but does not merit an official warning.
- Official Warning – the Lord Chief Justice will issue the judicial office holder with an official 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 Removal Tribunal – depending on the level of judge involved, a judicial office holder may only be removed 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. Therefore, 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 will consult the Lord Chancellor (and, where appropriate, the Prime Minister) and refer the matter to a removal tribunal. The removal tribunal will present its recommendations to the Lord Chancellor. A judicial office holder may be suspended from office when a removal tribunal has been convened. (Under a devolved administration, certain functions of the Lord Chancellor will fall to the First Minister and deputy First Minister.)

As noted above, judicial decisions may only be challenged through established legal procedures, and it may be necessary to delay investigation or determination of the complaint until such proceedings are concluded. A finding that a judicial office holder’s conduct failed to meet the required standard will **not** in any circumstances result in the judgment in a case being overturned or altered.

## **9. Confidentiality and Publicity**

All complaints will be treated in confidence as far as possible, to protect both the complainant and the judicial office holder concerned. Details of the complaint will normally be disclosed only to those involved in processing and investigating the complaint. To ensure that the process is fair, of course, details of the complaint must be revealed to the judge in question, and some information may be revealed to third party witnesses if necessary.

It will be taken that the complainant accepts that the information submitted will be disclosed and used in accordance with this Code of Practice. If the complainant states otherwise, it may not be possible to investigate the complaint.

A public statement or press release will normally only be made where it is in the public interest – usually this will be in serious cases, or where a case has already attracted publicity. Other than to confirm that an investigation is being conducted, no statement will be made until the process has been concluded. Any statement will not identify the complainant or judge or contain details which would allow either party to be identified, unless that person consents or the information is already in the public domain.

Information concerning complaints received in relation to an individual judicial office holder may be made available to the Northern Ireland Judicial Appointments Commission if that office holder is seeking re-appointment. In limited circumstances, information may also be disclosed for specific purposes at the discretion of the Lord Chief Justice. For example, information may be passed to the Presiding Judge to facilitate the allocation of business, or to the chairman of the Judicial Studies Board to facilitate training.

## **10. 'Whistle blowing'**

It is recognised that a member of court staff or the legal profession may wish to draw the Lord Chief Justice's attention to the conduct of a judicial office holder. In view of the fact that members of court staff and the profession have an ongoing working relationship with the judiciary, the special provisions outlined in this section shall apply.

In such a situation the complainant should forward details of their complaint in the normal manner to the complaints officer in the Lord Chief Justice's Office. He or she should include his or her name and contact details, but indicate that he or she wishes the complaint to be dealt with under the 'whistle blowing' provisions. The complainant's identity and their statement will not be disclosed to the judicial office holder concerned without the complainant's express written consent. This may, however, limit the scope of the investigation.

The complaints officer will nonetheless attempt to investigate the matter by seeking to obtain information on the conduct in question from other sources. The steps taken will, as far as possible, mirror those taken in the course of an ordinary investigation. It will not be possible to use the complainant's statement as evidence unless he or she agrees to the statement being disclosed. If it is the only information on the judge's conduct that is available, no further action may be possible. Ultimately any action taken will depend on the evidence that can be obtained from other sources.

If the complaint alleges criminal conduct, the complaints officer will be obliged to forward the complaint to the police and anonymity cannot then be guaranteed.

## **11. Complaints Statistics**

Statistics will be recorded on the total number of complaints received, the number of complaints against each tier of judicial office holder, the nature of complaints received, the number of complaints disposed of at each stage of the process, the manner of disposal, and the time taken to investigate and dispose of complaints.

Statistical information will be made available on the internet and may be requested from the Lord Chief Justice's Office.

The number and nature of complaints against individual judicial office holders will be monitored.

## **12. Tribunal Complaints**

Complaints passed by the Lord Chief Justice's Office to a tribunal president's office will be dealt with in the same manner as is outlined above, by the president and his or her staff.

Complaints received directly by a tribunal president's office will be considered by the tribunal's complaints officer in the same way. If the complaint is outside the scope of the system, the complaints officer shall advise the complainant. If the complaint is clearly within the less 'serious category' the complaints officer should forward a copy to the Lord Chief Justice's Office, but the tribunal complaints officer may proceed to deal with the complaint in the manner outlined above.

If the complaint appears that it might fall within the serious category, the tribunal's complaints officer should consult the complaints officer in the Lord Chief Justice's Office.

The timescales set out in Annex E will also apply to complaints dealt with by the tribunal president.

The tribunal's complaints officer will establish whether any proceedings are ongoing or pending, or if there is any other factor which might require investigation of the complaint to be delayed, as noted above. If investigation is to be delayed, the complainant and the Lord Chief Justice's Office will be informed of the delay and the reason for it. When the proceedings are concluded, the tribunal's complaints officer will contact the complainant and determine whether, in light of the outcome, the complaint still requires to be considered. The tribunal's complaints officer must advise the Lord Chief Justice's Office at this stage if a delayed complaint is to be considered.

Since all 'serious' complaints shall be dealt with by the Lord Chief Justice's Office, it is expected that the majority of the complaints passed to the president will be considered for informal resolution. Where appropriate, the tribunal's complaints officer will attempt to resolve the issue informally in the same manner as is outlined in section 5.

If informal resolution is unsuccessful, or the complaint is not suited to informal resolution, the tribunal's complaints officer will investigate it in accordance with the procedure set in section 6, and will prepare a report for the tribunal president.

The tribunal president will determine what action is required based on the report, although he or she may make any additional inquiries he or she considers to be necessary. If it appears to the president on receiving the report that the complaint might be considered 'serious', he or she should contact the Lord Chief Justice's Office before making a determination.

The tribunal president or the tribunal's complaints officer will notify the complainant, the tribunal member and the Lord Chief Justice of the decision, and will set out the reasons for the decision.

The tribunal president may decide to take no further action, to provide advice, training, or mentoring, to issue a warning, or a final warning, or to restrict the cases assigned to the tribunal member (or to take a combination of these actions).

### Review

The parties will have 10 working days from notification of the tribunal president's decision within which to seek a review. A request for a review should be made in writing to the Lord Chief Justice's Office. The request

should include the specific reasons for the request. The Lord Chief Justice's Office will send a copy of the request to the tribunal president. The Lord Chief Justice may review the handling of the matter, the findings of the investigation, and the outcome. As part of the review process the other party will be given an opportunity to make representations if the Lord Chief Justice is minded to alter the decision. The parties will be notified of the Lord Chief Justice's decision.

### Record Keeping

The tribunal's complaints officer will keep a file for each complaint received. Statistics on the complaints received, how they were disposed of, and the time taken, will be forwarded to the complaints officer in the Lord Chief Justice's Office. Tribunal Presidents should monitor the complaints received by individual office holders.

## Annex A – Statutory Background

This Code of Practice is issued under Section 16 of the Justice (Northern Ireland) Act 2002:

### “16 Complaints About Holders of Judicial Office.

(1) The Lord Chief Justice must prepare a code of practice relating to the handling of complaints against any person who holds a protected judicial office.

(2) The code must include provision for any complaints appearing to the Lord Chief Justice-

(a) to involve a serious allegation of misbehaviour or inability to perform the functions of an office, and

(b) to have a reasonable prospect of being substantiated, to be referred to a tribunal for it to provide advice about any steps which should be taken to deal with the complaint.

(3) The Lord Chief Justice may from time to time prepare a new code or make alterations to a code.

(4) The Lord Chief Justice must publish each code prepared by him and any alterations which he makes to a code (or the code as altered).”

## **Annex B - List of Protected Judicial Offices**

The following are designated as protected judicial offices by Section 2 (5) of the Act (as amended):

### **Part 1 - 'Less serious' complaints against the following office holders will be investigated by the Lord Chief Justice's Complaints Officer:**

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 officers (within the meaning of section 70(1) of the Judicature (Northern Ireland) Act 1978 - this includes District Judges and Masters of the Supreme Court.

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

Chief 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

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

President of the Lands Tribunal for Northern Ireland

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

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

Member of the legal panel of persons available to act as chairmen of the Social Care Tribunals in Northern Ireland<sup>10</sup>

Chairman of an Appeal Tribunal for the purposes of the Adoption (Northern Ireland) Order 1987<sup>11</sup>

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, Improvements and Regulation) (Northern Ireland) Order 2003<sup>12</sup>

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

Member of the Mental Health Review Tribunal

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<sup>13</sup>

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<sup>14</sup>

Chairman of the Plant Varieties and Seeds Tribunal for the purpose of proceedings brought before it in Northern Ireland<sup>15</sup>

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<sup>10</sup> Repealed by the Constitutional Reform Act 2005 s. 15(2), Sch 5, Part 1, para 115(1)

<sup>11</sup> Repealed by the Constitutional Reform Act 2005 s. 15(2), Sch 5, Part 1, para 122(1)

<sup>12</sup> Substituted by the Constitutional Reform Act 2005, s. 15(2), Sch 5, Part 1, para 122(3)

<sup>13</sup> Inserted by the Constitutional Reform Act 2005 s. 15(2), Sch 5, Part 1, para 122(5)

<sup>14</sup> Inserted by the Constitutional Reform Act 2005 s. 15(2), Sch 5, Part 1, para 122(5)

<sup>15</sup> Inserted by the Constitutional Reform Act 2005 s. 15(2), Sch 5, Part 1, para 122(5)

Member of the panel of person 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<sup>16</sup>

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<sup>17</sup>

Member of the panel of chairmen of VAT Tribunals for Northern Ireland<sup>18</sup>

General Commissioner for a division in Northern Ireland (appointed under section 2 of the Taxes Management Act 1970<sup>19</sup>

President of the Northern Ireland Valuation Tribunal

**Part 2 - 'Less serious' complaints against the following office holders will be investigated by the complaints officer in the relevant tribunal:**

Social Security Commissioner for Northern Ireland

Deputy Social Security Commissioner for Northern Ireland

Child Support Commissioner for Northern Ireland

Deputy Child Support Commissioner for Northern Ireland

Member of the panel of persons to act as members of the appeal tribunals (within the meaning of Chapter 1 of Part 2 of the Social Security (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<sup>20</sup>

Member of the panel of chairmen of the Fair Employment Tribunal

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<sup>16</sup> Inserted by the Constitutional Reform Act 2005 s. 15(2), Sch 5, Part 1, para 122(5)

<sup>17</sup> Inserted by the Constitutional Reform Act 2005 s. 15(2), Sch 5, Part 1, para 122(5)

<sup>18</sup> Inserted by the Constitutional Reform Act 2005 s. 15(2), Sch 5, Part 1, para 122(5)

<sup>19</sup> Inserted by the Constitutional Reform Act 2005 s. 15(2), Sch 5, Part 1, para 122(5)

<sup>20</sup> Inserted by the Constitutional Reform Act 2005, s. 15(2), Sch 1, Part 1, para 122(4)

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) 1954

Member of the panel of persons who may serve as chairman of the Special Educational Needs and Disability Tribunal for Northern Ireland

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<sup>21</sup>

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<sup>22</sup>

Member of the Northern Ireland Valuation Tribunal

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<sup>21</sup> Inserted by the Constitutional Reform Act 2005 s. 15(2), Sch 5, Part 1, para 122(5)

<sup>22</sup> Inserted by the Constitutional Reform Act 2005 s. 15(2), Sch 5, Part 1, para 122(5)

## **Annex C – Categorisation of Complaints**

The following list provides examples of the type of complaint that might be considered to be within the 'serious' category (if determined to be within the scope of the system). It is by no means exhaustive, and the decision will depend on the full circumstances of the case.

- Making exceptionally inappropriate remarks, such as comments on a person's religion or racial background.
- A serious failure to disclose a fundamental conflict of interest.

The possible consequences of the complaint, if upheld, will be taken into account. For instance, if a possible outcome is felt to be referral to a removal tribunal then the complaint will be treated as serious.

The following are examples of the type of complaint likely to be categorised as 'less serious'.

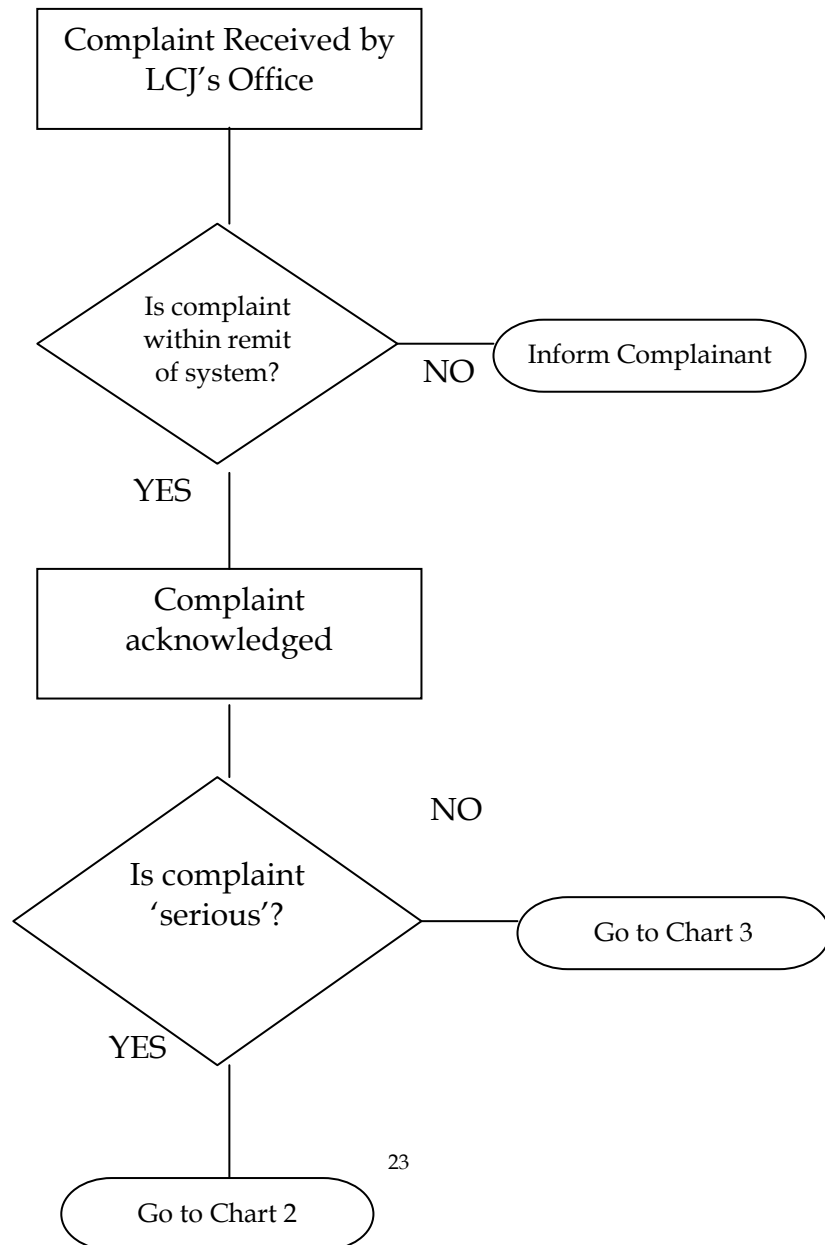
- Rudeness to court users.
- Rudeness to a member of the public at an official function.
- Offensive remarks in a judicial speech.
- Insensitive behaviour, for example towards a vulnerable witness or a member of a minority community.

In determining whether a complaint should be categorised as serious, regard will be given to the judge's record of upheld complaints.

## Annex D - Flow Charts

The following flow charts illustrate the basic process followed for serious complaints, non-serious complaints that do not concern a tribunal member, and non-serious complaints that concern a tribunal member.

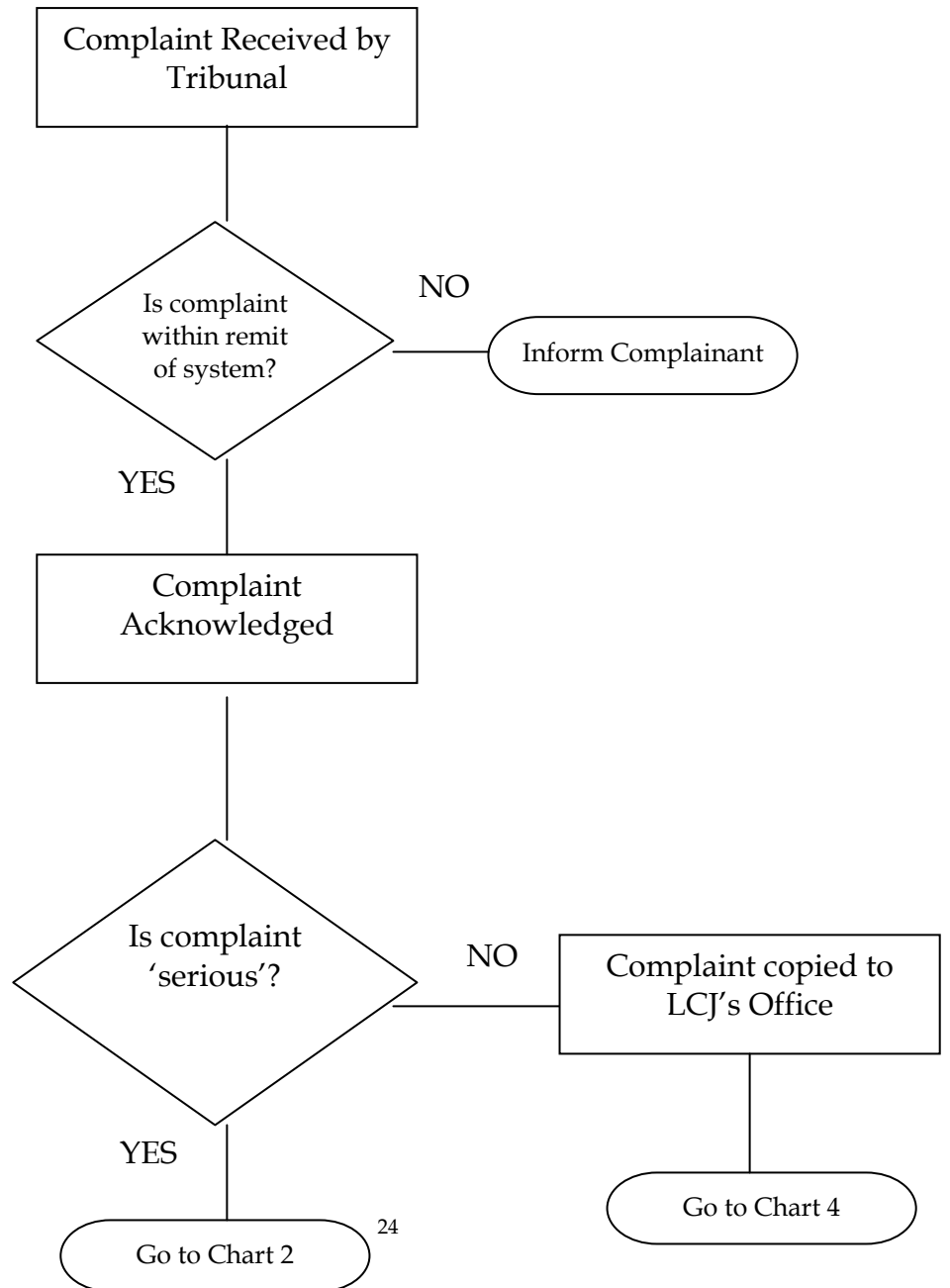
### Judicial Complaints



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<sup>23</sup> In certain circumstances, the matter may be referred directly to a removal tribunal for investigation.

## Tribunal Complaints



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<sup>24</sup> In certain circumstances, the matter may be referred directly to a removal tribunal for investigation.

Chart 2 – Serious Complaints

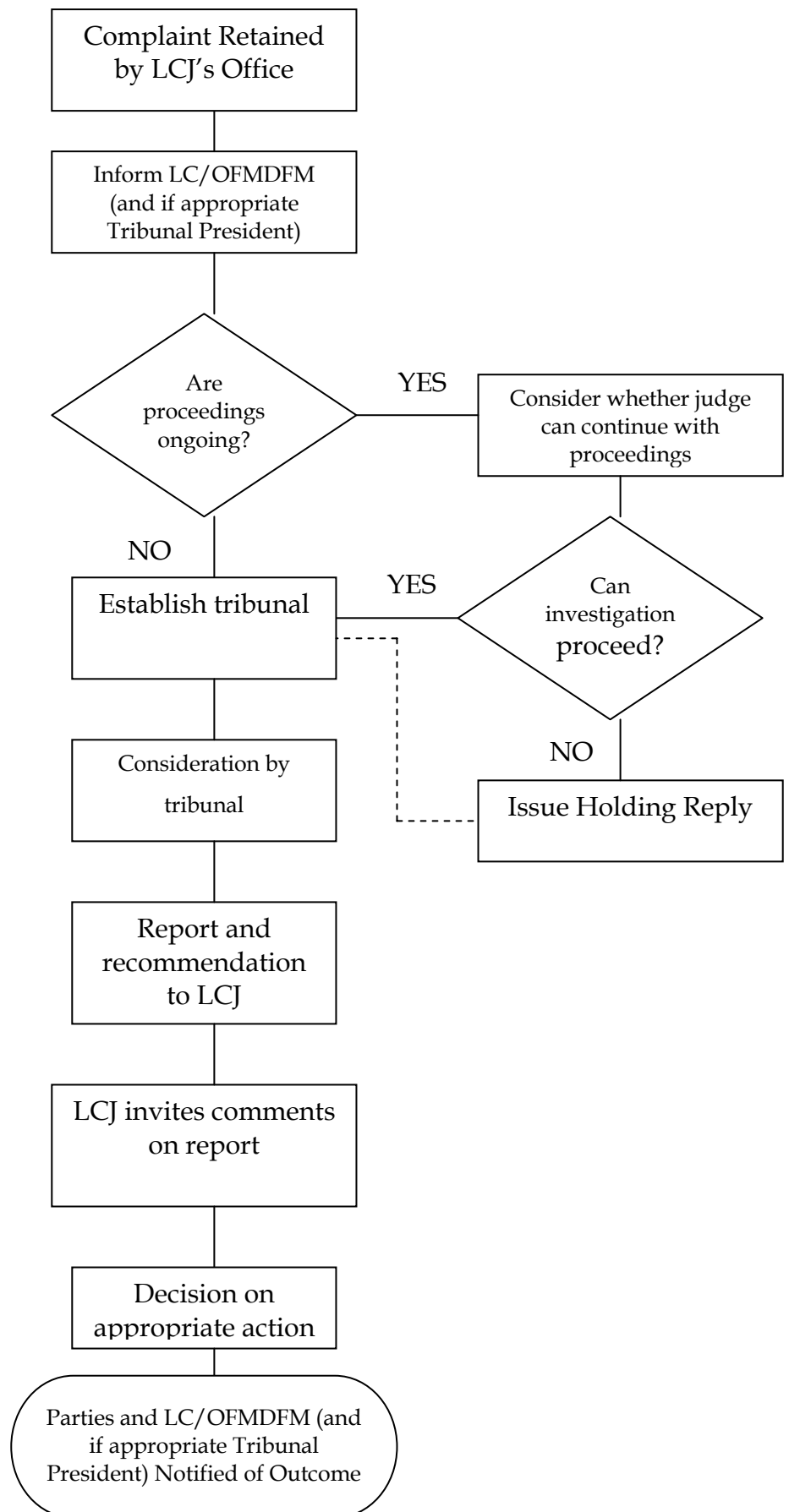
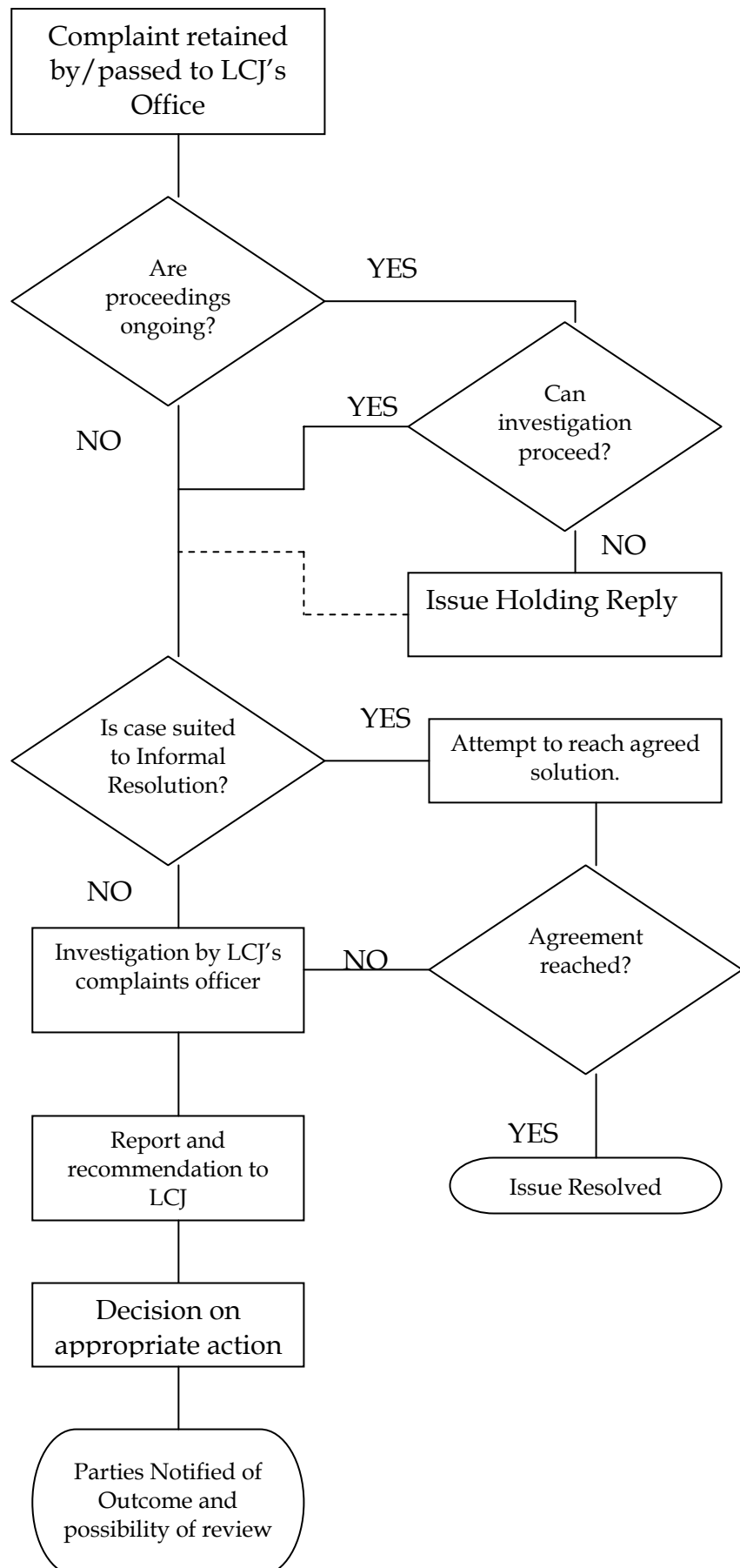
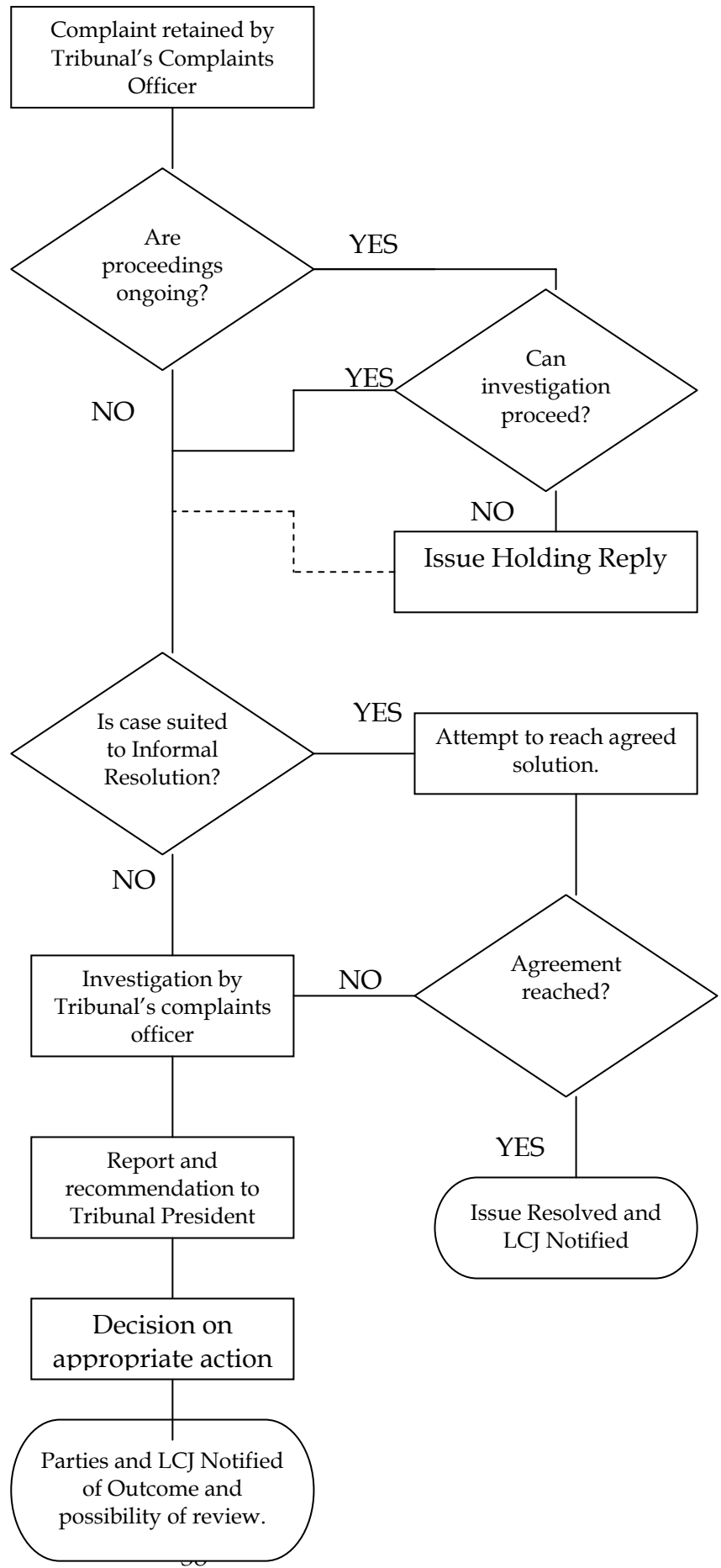


Chart 3 – Other Complaints (Non-Tribunal)



**Chart 4 - Other Complaints (Tribunal)**



## **Annex E - Target Times for Processing Complaints**

There will be an enormous variety in the nature and complexity of the complaints dealt with under this code of practice and consequently the time taken to investigate complaints will vary. It is important that all complaints are investigated thoroughly; that the parties have adequate opportunity to respond; and that careful consideration is given to the complaint before a final decision is reached.

The times set out below are therefore intended as a guide as to when the parties can expect to be contacted. Where there is any delay in dealing with a complaint, we will keep the parties informed and will endeavour to complete the process as soon as possible.

- All complaints will be acknowledged within 10 working days of receipt, and the complainant will be provided with contact details of the person dealing with the complaint.
- If it is determined that the complaint is outside the scope of this code and is not to be considered further, the complainant will be advised within 10 working days of receipt of the complaint.

### **'Less Serious' Complaints**

- When an acknowledgement has been issued and full details of the complaint have been received, the subject judicial office holder will be informed within 10 working days and will be asked to respond within 15 working days.
- Where necessary, the complaints officer will obtain statements from third parties. They will be asked to respond within 15 working days.
- The complaints officer will prepare a report within 10 working days of receiving all the relevant information.

- The parties will be notified of the Lord Chief Justice's or the Tribunal President's decision within 5 working days of the decision being taken.

### **Informal Resolution**

- It is not possible to set a timescale for informal resolution. However, the complaints officer will attempt to resolve the matter as expeditiously as possible.

### **'Serious' Complaints**

- The parties will be notified within 5 working days of a complaint being referred to a complaints tribunal.
- It is not possible to specify a timescale for the complaints tribunal's investigation. The parties and any required witnesses will be given at least 10 working days notice in writing of any hearing.
- The parties will be notified of the Lord Chief Justice's decision within 5 working days of the decision being taken.

### **Further Correspondence**

- If at any point in the process it is necessary to seek further information from the complainant, the judicial office holder, or a witness, the request will include a timescale for that person to reply. Generally this will be 10 working days.

## **Annex F – Contact Details**

Complaints should be submitted in writing to the following address:

The Complaints Officer  
Lord Chief Justice's Office  
Royal Courts of Justice  
Chichester Street  
Belfast BT1 3JF

Or by e-mail to:

[JudicialComplaints@courtsni.gov.uk](mailto:JudicialComplaints@courtsni.gov.uk)

If you require further information or assistance, please contact us by writing to the address or e-mail address above, or by telephoning (028) 9072 4616.