

Questionnaire 2020 of the 1st Study Commission IAJ-UIM
“Disciplinary proceedings and judicial independence”

- 1) What kind of allegation can justify disciplinary proceedings against judges in your country: an individual’s behaviour only in the workplace or also in his or her private life? Give some examples, please. Can the content of the decisions taken by judges also lead to disciplinary proceedings? Can judges be charged criminally for the content of their judicial decisions under any circumstances?

The Judicial Conduct Investigations Office (JCIO) is the statutory body which supports the Lord Chancellor (LC) and Lord Chief Justice (LCJ) in their joint and equal responsibility for judicial discipline, governed by the *Judicial Discipline Regulations 2014* and supporting rules. The statutory remit of the JCIO is to deal with complaints of misconduct. This relates to the personal behaviour of an office holder, both within the workplace and in their personal life, in as far as it can reasonably be considered to affect their suitability to hold office, as well as the reputation of the wider judiciary. This can include driving offences; misuse of judicial status; misuse of social media; inappropriate behaviour and comments; and receipt of fines, cautions and criminal convictions.

More specific examples include:

- A magistrate who used the ‘JP’ suffix in writing a letter to his partner’s former employer to object to his dismissal. This was perceived to be using his judicial status in an attempt to exert improper pressure on the recipient. Very little evidence of remorse was shown, and the magistrate was issued with formal advice.
- Videos of a judge performing stand-up comedy appeared on YouTube, joking lewdly about race, slavery, incest, underage marriage and lesbians. Whilst this clearly relates to the judge’s behaviour in his private life, and he did not identify himself as a judicial office holder within the act, his actions were found to amount to misconduct. His behaviour had the potential to damage public confidence in both himself and the wider judiciary; he was issued with a formal warning.
- An office holder pleaded guilty to wrongfully using a blue badge, receiving a criminal conviction. Whilst her assertion that it had been a genuine mistake was acknowledged, the conviction rendered her incompatible with holding a judicial role and she was removed from office.

Complaints that relate to the decision a judge has made, or to the way in which they have handled a case, do not constitute misconduct and are therefore outside the remit of the JCIO. A judicial decision can only be overturned by means of appeal. If, through this, the content of the decision is found to be so lacking in judgment that it amounts to misconduct, the case can then be referred to the JCIO.

As judicial immunity applies where judges are acting in their jurisdiction, a judge cannot be sued in respect of the content of their judgments. A judge could, however, be prosecuted for corruption. For example, if a judge was party to the fraud of a defendant and their judgment furthered that fraud, the judge could be prosecuted as a party to the fraud.

- 2) Which body is responsible for disciplinary proceedings against judges in your country? Is the body that carries out the disciplinary procedure the same one that imposes the penalties? What is the

composition of the body responsible for disciplinary proceedings (as well as the one who must apply penalties to judges, when it is not the same)? Is it composed only by judges, does it have a mixed composition, or is it composed only by professionals outside of the Judiciary Branch? Kindly describe the composition of that body (those bodies).

The LC and LCJ have a joint and equal responsibility for judicial discipline in England and Wales (in Scotland, the LC and the Lord President share this role; in Northern Ireland, it is the LC and the Lord Chief Justice of Northern Ireland). The JCIO is the statutory body which supports them in this role; it has the power to reject and dismiss complaints, but not to make findings of misconduct or to recommend a sanction. Rather, cases are referred to statutory recommending authorities. These are: Advisory Committee conduct panels (who consider magistrates cases in the first instance, and only refer cases to the JCIO once a finding of misconduct has been made); Chamber Presidents (likewise, for tribunals complaints); Nominated Judges and Investigating Judges (appointed by the LCJ to investigate disciplinary cases) and Disciplinary Panels (comprised of both office-holders and lay members). These authorities have the power to make findings of misconduct and to recommend sanctions to the LC and LCJ. Having sight of precedent, the JCIO advises the LC and LCJ on whether sanctions recommended to them appear to be reasonable and proportionate. Whilst the JCIO is staffed by civil servants, it is operationally independent from the rest of the Judicial Office and Ministry of Justice.

- 3) Which disciplinary penalties can be imposed on judges in your country? Is the disciplinary penalty of removal from office among them? Can a judicial conviction for a crime lead to a penalty of removal from office?

In order of increasing severity, the sanctions available to the LC and LCJ are: formal advice, formal warning, reprimand, and removal. Suspension is also available as a sanction in certain circumstances (separate from interim suspension pending investigation), but has not been used in recent years.

Criminal convictions can lead to removal from office, particularly considering the impact on the standing of the judicial office holder and the reputation of the wider judiciary. For certain categories of criminal conviction, the summary process (Part 3 of the *Judicial Conduct Rules 2014*) states that an office holder should be removed from office without further investigation.

- 4) In the disciplinary proceedings against judges in your country, is a fair trial granted? Is there an appeal against the decision imposing a disciplinary penalty on judges? During the disciplinary proceedings, can the judge be suspended from office? Does the judge who is suspended during disciplinary proceedings continue to earn a salary normally or does the judge suffer any reduction in income?

In disciplinary proceedings, judicial office holders are afforded the right to make their representations in response to a complaint about their conduct. These representations will be considered by the relevant recommending authority (or authorities), and by the JCIO in producing their advice to the LC and LCJ. Similarly, judicial office holders are given the opportunity to make comments on the reports produced by Disciplinary Panels and Nominated and Investigating Judges; these comments are included in the final report and

advice to the LC and LCJ. In each case, it is at the discretion of the Disciplinary Panel as to whether they wish to hear oral evidence from the subject judge.

Whilst there is no appeals process against the decision to issue a sanction, the Judicial Appointments and Conduct Ombudsman can consider complaints about how the JCIO handled a case, specifically looking at whether the correct rules and procedure have been followed.

Judicial office holders can be suspended pending investigation. Salaried judges continue to earn salary as normal during suspension. As fee-paid judges are paid according to the number of sittings or days worked, they do not earn during a period of interim suspension.

- 5) Were there any recent changes regarding disciplinary proceedings that may be considered to infringe upon judicial independence in your country? If so, were those changes introduced by legislation, or were existing laws applied differently? Please specify.

N/A.