

JUDICIAL AND LEGAL SERVICES COMMISSION



Complaints Procedure

in relation to the Cayman Islands judiciary

This procedure is drawn up by the Cayman Islands Judicial and Legal Services Commission pursuant to Section 106(10)(a) of the Cayman Islands Constitution Order 2009.

8 May 2014

1. INITIATION OF COMPLAINTS

(i) Complaints concerning a judicial office-holder (which, for the avoidance of doubt, includes a magistrate) shall be made to the Commissions Secretariat on the form in Schedule I.

(ii) Notwithstanding (i) above the JLSC may of its own motion initiate a complaint against a judicial office-holder where the JLSC has reasonable cause to believe that the conduct of the judicial office-holder should be investigated. In these circumstances, the provisions in Section 3 “Referral for Inquiry and Report” will apply.

2. PRELIMINARY CONSIDERATION

(i) Upon receipt of a complaint (other than a complaint by the Commission of its own motion) on the prescribed form the Manager shall refer it to a Sub-Committee of the JLSC (the “Complaints Committee”), comprising of not less than two members appointed by the Chairman of the JLSC, for preliminary consideration, and the Manager may, if so directed by the Commission, serve the judicial office-holder with a copy of the complaint.

(ii) Unless there are reasons why it believes that a complaint should be investigated, the Complaints Committee 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, frivolous or unmeritorious;
- (e) it is without substance or, even if substantiated, would not require any disciplinary action to be taken;
- (f) it is manifestly 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 or her 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 or her suitability to hold judicial office;
 - (k) for any other reason it does not relate to misconduct by a judicial office-holder.
- (iii) The Complaints Committee may not dismiss a complaint under paragraph (a) unless it has given the complainant a reasonable opportunity to provide adequate particulars of the complaint.
- (iv) Where a complaint is about a judicial decision or judicial case management, and raises a question of misconduct, the Complaints Committee shall defer consideration until the appeal process in the case is complete or the time for appealing has expired without an appeal being lodged. It shall then review the matter, and proceed in the light of any appellate ruling.
- (v) Complaints that allege criminal offences, including corruption, should not be investigated by the Complaints Committee, and the complainant should be advised to report the matter to the police or other appropriate authority for investigation by them and in an appropriate case the Commission may itself do the same.
- (vi) Where a judicial office-holder is convicted of a criminal offence (including any traffic offence other than a parking offence) the Manager shall ask the Director of Public Prosecutions for a report on the matter, and on receipt of that report shall refer it to the Governor who shall treat it in the same way as he would a report from an Investigating Judge, and proceed accordingly.

3. REFERRAL FOR INQUIRY AND REPORT

- (i) Unless it dismisses a complaint under Part 2 above, or the complaint alleges a criminal offence, the Complaints Committee, or in the case of a complaint by the Commission of its own motion, the Commission, must refer the matter for investigation as follows –
- (a) in respect of complaints concerning the President of the Court of Appeal or the Chief Justice, to an investigating judge from outside the Islands, to be appointed by the Governor.
 - (b) in respect of complaints concerning Judges of the Court of Appeal, to the President of the Court of Appeal;
 - (c) in respect of complaints concerning Judges of the Grand Court and Magistrates, to the Chief Justice.
 - (d) in respect of complaints initiated by the JLSC under Section 1(ii).

- (ii) The person to whom a complaint is referred under this part shall be known as ‘the Investigating Judge’.

4. CONDUCT OF INQUIRY

- (i) Upon receipt of a referral from the Complaints Committee, the Investigating Judge shall, as soon as practicable, notify the subject of the complaint, provide him or her with a copy (which may be an extract or summary in an appropriate case), and invite his or her comments in writing within 14 days or such larger period, not exceeding sixty calendar days, as the Investigating Judge may direct.
- (ii) Upon receipt of comments in writing from the subject of the complaint, or at the expiry of the 14 day period, the Investigating Judge must -
 - (a) decide how to conduct the investigation;
 - (b) notify the subject of the complaint and the complainant of the proposals for the conduct of the investigation, and whether oral evidence will be taken;
 - (c) invite the subject of the complaint and the complainant to make representations about the procedure to be adopted and the case; and
 - (d) record the representations on the proposals which those persons may make.
- (iii) Any representations from the subject of the complaint or the complainant must be provided to the Investigating Judge within ten business days or such longer period as the Investigating Judge may direct of an invitation under paragraph (ii)(c).
- (iv) The Investigating Judge may invite the subject of the complaint, the complainant or any other person who may be able to assist the investigation to give evidence about the case.
- (v) The Investigating Judge may take oral evidence if he considers it necessary to do so.
- (vi) The Investigating Judge must disclose any evidence obtained from the complainant or other person under paragraph (iv) to the subject of the complaint and must invite the subject of the complaint to make representations on that evidence.
- (vii) Where the Investigating Judge decides to take oral evidence, he or she must arrange for that evidence to be recorded electronically and transcribed.
- (viii) The Investigating Judge shall fix a date for taking the evidence and notice of such date shall be sent to the subject of the complaint and the complainant.

(ix) Where the Investigating Judge considers that it is necessary to disclose evidence obtained during the course of an investigation to any person other than the subject of the complaint, he or she must first invite—

- (a) the person who provided the evidence, and
- (b) the subject of the complaint

to make representations about the proposed disclosure.

5. REPORT

- (i) At the conclusion of his or her investigation the Investigating Judge shall report to the Governor as to the facts of the case and whether the complaint is substantiated or not. The report should be limited to his or her findings of fact, and should not include recommendations as to disciplinary sanctions or the future conduct of the matter.
- (ii) Where it falls to the Investigating Judge to establish any fact, any question as to whether that fact is established must be decided on the balance of probabilities.
- (iii) The Investigating Judge must send a copy of his or her final report to the JLSC, the complainant, and the subject of the complaint and to any other person who has been invited to make representations on a draft of his report, at the same time as he or she sends the final report to the Governor.

6. GOVERNOR'S ACTION

- (i) On receipt of the Investigating Judge's report the Governor may –
 - (a) if he or she considers that further investigation is required, refer the case back to the Investigating Judge to conduct such further investigation, or appoint a judge from outside the Islands or other appropriate person to conduct it;
 - (b) if he or she considers that no misconduct is involved, dismiss the complaint;
 - (c) if he or she considers that, in the light of the report, the question of removing a judge of the Grand Court or a judge of the Court of Appeal from office for misbehaviour ought to be investigated, then he or she shall refer the report to the JLSC for investigation and advice under either section 96(4) or 101(4) of the Constitution as applicable;
 - (d) if he or she considers that, in the light of the report, the question of removing a Magistrate from office for misbehaviour ought to be investigated, then he or she shall refer the report to the JLSC for investigation and for advice under section 106(1) of the Constitution; or

- (e) if he or she considers that, in the light of the report, the case may call for the exercise of such powers of disciplinary control short of removal from office as may be conferred by section 106(1) of the Constitution or otherwise then he or she shall refer the report to the JLSC for advice under that section.
- (ii) Before making a referral under sections 96(4) or 101(4) of the Constitution or under sub-paragraph 6(i)(d) above, the Governor may refer the matter to the JLSC to advise whether the case can properly be disposed of by a lesser sanction than removal.

7. JLSC'S CONSIDERATION

- (i) Upon receipt of a referral from the Governor otherwise than under sections 96(4) or 101(4) of the Constitution or under sub-paragraph 6(i)(d) above, the JLSC shall consider the Investigating Judge's report and, in the light of the report, advise –
 - (a) that no disciplinary action is required; or
 - (b) upon a referral under sub-paragraph 6(ii), that the case can properly be disposed of by a lesser sanction than removal; and/or
 - (c) that the case does call for the exercise of such powers of disciplinary control short of removal from office as may be conferred by section 106(1) of the Constitution or otherwise.
- (ii) Upon receipt of a referral from the Governor under sections 96(4) or 101(4) of the Constitution, the JLSC shall conduct the inquiry required by the Constitution, and report on the facts to the Governor and advise whether he or she should request that the question of the removal of the Judge in question should be referred by Her Majesty to the Judicial Committee of the Privy Council.
- (iii) Upon receipt of a referral from the Governor under sub-paragraph 6(i)(d) above, the JLSC shall carry out its own investigation and report on the facts to the Governor and advise whether the Magistrate should be removed from office for misbehaviour; and, if not, whether the case calls for the exercise of disciplinary control short of removal from office.
- (iv) Before giving advice under sub-paragraph 7(i)(c) or reporting or advising under paragraphs 7(ii) or (iii) above, the JLSC shall afford the subject of the referral an opportunity to be heard or to make written representations.

8. INTERNAL CONCERNS

- (i) Where the Chief Justice in respect of a Judge of the Grand Court or Magistrate, or the President of the Court of Appeal in respect of a Judge of the Court of Appeal, has a concern about the conduct or performance of such a person which they consider may merit the exercise of such powers of disciplinary control as may be conferred by section 106(1) of the Constitution, they shall, after notifying the Governor and the Complaints

Committee, treat such concern as a referral by the Complaints Committee and proceed to conduct the inquiry required by Part 4, and the above procedure shall apply thereafter.

- (ii) Notwithstanding the above, the Chief Justice or the President of the Court of Appeal may informally reprimand or warn a judicial officer without the need to follow this Complaints Procedure.

Complaints Form

Complaints Procedure – Schedule I

PLEASE READ BEFORE PROCEEDING FURTHER:

1. Unless there are reasons why it believes that a complaint should be investigated, the Complaints Committee of the Judicial and Legal Services Commission (the JLSC) will 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 manifestly untrue, mistaken or misconceived;
 - (g) it raises a matter which has already been dealt with 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 or her 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 or her suitability to hold judicial office; or
 - (k) for any other reason it does not relate to misconduct by a judicial office-holder.
2. The Complaints Committee will not entertain any complaint which is anonymous and/or where the complainant provides no, or insufficient, contact information.

Part A – About you (the complainant)

1. Name: Mr/Mrs/Miss/Ms _____
2. Physical Address: _____
3. Mailing Address: P.O. Box _____ Postal Code: KY - _____
4. Contact numbers: Home: _____ Work: _____ Cell: _____
5. Email: _____

Only fill out this box if someone is assisting you with the complaint – for example a lawyer

Name of representative: _____

Organisation: _____

Physical Address: _____

Mailing Address: P.O. Box _____ Postal Code: KY - _____

Contact numbers:

Work: _____ Cell: _____ Email: _____

Part B – Your complaint

About whom are you complaining (the judicial office-holder)?:-

What happened?

Please describe the events that you want to complain about. We need to know what you say happened and where and when it happened. Please give us all the dates and as many specific details as you can remember regarding the behaviour complained of.

Lined area for writing the complaint details.

Part C – Further information

Supporting evidence

Please attach copies of any documents that may help us investigate your complaint (for example, letters). If you cannot do this, please tell us about such documents or other evidence and how it or they can be obtained.

Have you made a complaint about this to anyone else? (For example, the office of the Complaints Commissioner)

If so, please provide details of the complaint, to whom it was made and the outcome. Please also attach copies of any correspondence relating to the complaint.

I hereby declare that the above information is accurate to the best of my knowledge.

Signature: _____

Date: _____

Consent to Release Information

I understand that the Governor's office and the JLSC may have to work with various individuals and agencies to investigate my complaint. Therefore I give my consent to the use and release of my complaint, any or all of its subject-matter and any additional information that the Governor's office, the JLSC or any person investigating my complaint feels is necessary to complete that investigation. I also understand that they will have to be released to the person who is the subject of my complaint.

Signature: _____

Date: _____

Remember:

- to sign and date this document; and
- to attach copies of any relevant documents.

**FAILURE TO PROVIDE ALL INFORMATION AND DOCUMENTS REQUESTED WILL
DELAY CONSIDERATION OF YOUR COMPLAINT**

Send your completed form to:
Manager, Commissions Secretariat
P.O. Box 391
Grand Cayman KY1-1106
CAYMAN ISLANDS