



# REPORT OF THE CAYMAN ISLANDS JUDICIAL AND LEGAL SERVICES COMMISSION

1 August 2010 to 31 July 2015

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## **Message from the Outgoing Chairman**

A competent, fair and independent judiciary with knowledge of the culture over which it administers justice is key in ensuring that persons – regardless of their gender, nationality, race, religion, sexual orientation, social or economic status – are free to pursue their dreams and ambitions without fear of being treated unlawfully by the Cayman Islands Government (“the Government”) or in civil matters.

The Judicial and Legal Services Commission (“the JLSC”) came into effect with the implementation of the Cayman Islands Constitution Order 2009 (“the Constitution”). As with many other aspects of modernisation, the Constitution has added checks and balances that further enhance the independence of the Cayman Islands Judiciary (“the Judiciary”) while at the same time adding more structure, accountability and transparency in relation to the selection of judges and senior legal positions in Government.

For the past five years I was privileged to have served as Chairman of the JLSC along with a most distinguished group of members. The JLSC has been unwavering in its commitment to carry out duties as prescribed by the Constitution. The JLSC, together with an outstanding Judiciary under the leadership of Chief Justice Anthony Smellie, seek to execute with the highest of standards and has ensured the quality, independence, and accountability integral to the Judiciary are being met.

I would like to thank Her Excellency the Governor Helen Kilpatrick, CB as well as her predecessor His Excellency the Governor Duncan Taylor, CBE for their support, most critically in the form of the high quality appointments they have made and continue to make to the JLSC.

To the JLSC members who have served with me, I would like to thank each of them for their hard work and unwavering commitment to diligently executing their duties. I welcome the new Chairman and new members and thank them for agreeing to serve on this very important Commission.

A summary of the work performed by the JLSC during my tenure as Chairman is outlined in the pages that follow; and I trust that this report will help add to the appropriate transparency that we are all seeking to achieve.

Dan Scott  
Chairman 2010 – 2015

## Constitutional Provisions

The constitutional provisions relating to the JLSC and its establishment, namely Sections 105 and 106 of the Cayman Islands Constitution Order 2009 (the “Constitution Order”), are as follows:

### “Section 105 – Judicial and Legal Services Commission

- (1) There shall be in and for the Cayman Islands a Judicial and Legal Services Commission which shall consist of –
  - (a) a Chairman and one other member, neither of whom shall be a lawyer, appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition;
  - (b) the President of the Court of Appeal, *ex officio*;
  - (c) a person appointed by the Governor, acting in his or her discretion, who holds or has held high judicial office in the Cayman Islands and has recent personal knowledge of the courts in the Cayman Islands;
  - (d) two persons appointed by the Governor, acting in his or her discretion, who hold or have held high judicial office in a Commonwealth country or Ireland, but do not currently hold such office in the Cayman Islands; and
  - (e) two attorneys-at-law qualified to practise in the Cayman Islands, one with experience in Government service and one with experience in private practice, appointed by the Governor, acting after consultation with representatives of legal professional organisations in the Cayman Islands and, where appropriate, the Attorney General.
- (2) No person shall be qualified to be appointed to the Judicial and Legal Services Commission if he or she is a member of, or a candidate for election to, the Legislative Assembly or (except for appointment under subsection (1)(e)) holds or is acting in any public office.
- (3) The office of a member of the Judicial and Legal Services Commission shall become vacant -
  - (a) at the expiration of five years from the date of his or her appointment or such earlier time as may be specified in the instrument by which he or she was appointed;
  - (b) if he or she resigns office by writing under his or her hand addressed to the Governor;
  - (c) if he or she becomes a member of, or a candidate for election to, the Legislative Assembly, or (except for a member appointed under subsection (1)(e)) is appointed to or to act in any public office; or
  - (d) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of that office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.
- (4) If the office of a member of the Judicial and Legal Services Commission becomes vacant or if such a member is for any reason unable to perform the functions of that office, the Governor, acting in accordance with subsection (1) for the appointment of that member, may appoint another suitably qualified person to that office for the unexpired term of the previous holder of the office or until the holder of the office is able to resume his or her functions.
- (5) Any decision of the Judicial and Legal Services Commission shall require the concurrence of not less than five members of the Commission, and the Commission shall take its decisions in such form and manner as it may determine; but any decision relating to the appointment of the

President of the Court of Appeal or the Chief Justice shall require the concurrence of at least two members of the Commission who have judicial experience.

(6) In the exercise of their functions, the Judicial and Legal Services Commission and its members shall not be subject to the direction or control of any other person or authority.

(7) The Judicial and Legal Services Commission may regulate its own procedure, which may include meeting by teleconference or other electronic means of communication.

### **Section 106 – Functions of Judicial and Legal Services Commission**

(1) Power to make appointments to the offices to which this section applies, and to remove and to exercise disciplinary control over persons holding or acting in such offices, shall vest in the Governor, acting in accordance with the advice of the Judicial and Legal Services Commission; but the Governor, acting in his or her discretion, may act otherwise than in accordance with that advice if he or she determines that compliance with that advice would prejudice Her Majesty's service.

(2) Before exercising the powers vested in the Governor by subsection (1) the Governor may, acting in his or her discretion, once refer the advice of the Judicial and Legal Services Commission back to the Commission for reconsideration by it.

(3) If the Judicial and Legal Services Commission, having reconsidered its original advice under subsection (2), substitutes for it different advice, subsection (2) shall apply to that different advice as it applies to the original advice.

(4) This section applies to the offices of—

(a) Chief Justice and other judge of the Grand Court;

(b) President of the Court of Appeal and other judge of the Court of Appeal;

(c) Attorney General;

(d) Director of Public Prosecutions;

(e) Magistrate;

(f) such other offices in the public service, for appointment to which persons are required to possess legal qualifications, as may be prescribed by any law enacted by the Legislature.

(5) No member of the Judicial and Legal Services Commission shall participate in any proceedings of the Commission which affect him or her personally.

(6) In cases where the Judicial and Legal Services Commission conducts an inquiry under section 96(4) or 101(4), the President of the Court of Appeal and any current judge of the Grand Court who is a member of the Commission shall not participate in that inquiry other than as a witness.

(7) A person holding the office of Attorney General, Director of Public Prosecutions or Magistrate may only be removed from office for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

(8) Where the issue of the removal from office of any person holding one of the offices mentioned in subsection (4)(c), (d), (e) or (f) has been referred to the Judicial and Legal Services Commission, the Governor may, acting after consultation with the Commission, suspend that person from performing the functions of his or her office pending the outcome of the referral.

(9) Any suspension, removal or disciplinary action taken under this section shall be carried out in accordance with the highest appropriate standards of procedural fairness.

- (10) The Judicial and Legal Services Commission shall –
- (a) draw up a code of conduct for the judiciary and a procedure for dealing with complaints; and
  - (b) have such other functions as may be conferred on it by a law enacted by the Legislature.
- (11) Subject to subsection (6), this section is without prejudice to sections 96 and 101.”

**The JLSC is also referred to in the Constitution in the following Sections:**

**“Section 96 – Tenure and Offices of Judges of the Grand Court**

- (1) Subject to this section and section 95(4)\*, a judge of the Grand Court shall vacate his or her office when he or she attains the age of 65 years; but -
- (a) the Governor may permit a judge who attains the age of 65 years to continue in office until he or she has attained such later age, not exceeding the age of 70 years, as may have been agreed between that judge and the Governor following the recommendation of the Judicial and Legal Services Commission;
  - (b) a judge who has attained the age at which he or she would otherwise vacate office under this subsection may continue in office for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceeding commenced before him or her before he or she attained that age.
- (2) A judge of the Grand Court may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with subsection (3).
- (3) A judge of the Grand Court shall be removed from office by the Governor by instrument under the public seal if the question of the removal of that judge from office has, at the request of the Governor made in pursuance of subsection (4), been referred by Her Majesty to the Judicial Committee of Her Majesty’s Privy Council under section 4 of the Judicial Committee Act 1833 or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.
- (4) If the Governor considers that the question of removing a judge of the Grand Court from office for inability as aforesaid or misbehaviour ought to be investigated, then-
- (a) the Governor shall refer the matter to the Judicial and Legal Services Commission;
  - (b) the Judicial and Legal Services Commission shall inquire into the matter and report on the facts of it to the Governor and advise the Governor whether he or she should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and
  - (c) if the Judicial and Legal Services Commission so advises, the Governor shall request that the question should be referred accordingly.
- (5) The Commissions of Inquiry Law as in force on the appointed day shall, subject to this section, apply as nearly as may be in relation to the Judicial and Legal Services Commission conducting inquiries under subsection (4) or, as the context may require, to the members of that

Commission as it applies in relation to Commissions or Commissioners appointed under that Law.

(6) If the question of removing a judge of the Grand Court from office has been referred to the Judicial and Legal Services Commission under subsection (4), the Governor may suspend the judge from performing the functions of his or her office, and any such suspension may at any time be revoked by the Governor, and shall in any case cease to have effect –

- (a) if the Judicial and Legal Services Commission advises the Governor that he or she should not request that the question of the removal of the judge be referred by Her Majesty to the Judicial Committee; or
- (b) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(7) The powers conferred on the Governor by this section shall be exercised by the Governor acting in his or her discretion.

\*95(4) It shall be lawful for a person qualified for appointment as a judge of the Grand Court to be so appointed (regardless of his or her age) for such term as may be specified in the instrument of appointment, and section 96 shall have effect in relation to any person so appointed as if he or she would attain the retiring age applicable to that office on the day on which the specified term expires.

### **Section 101 – Tenure of Offices of Judges of the Court of Appeal**

(1) The judges of the Court of Appeal shall be appointed for such period as may be specified in their respective instruments of appointment; but a person whose appointment as a judge of the Court of Appeal has expired may, with the permission of the Governor, acting in his or her discretion, continue in office for such period as may be necessary to enable him or her to deliver judgment or to do any other thing in relation to any proceeding previously commenced before him or her.

(2) A judge of the Court of Appeal may be removed from office only for inability to discharge the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with subsection (3).

(3) A judge of the Court of Appeal shall be removed from office by the Governor by instrument under the public seal if the question of the removal of that judge from office has, at the request of the Governor made in pursuance of subsection (4), been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833 or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(4) If the Governor considers that the question of removing a judge of the Court of Appeal from office for inability as aforesaid or misbehaviour ought to be investigated, then –

- (a) the Governor shall refer the matter to the Judicial and Legal Services Commission;
- (b) the Judicial and Legal Services Commission shall inquire into the matter and report on the facts of it to the Governor and advise the Governor whether he or she should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and

- (c) if the Judicial and Legal Services Commission so advises, the Governor shall request that the question should be referred accordingly.
- (5) The Commissions of Inquiry Law as in force on the appointed day shall, subject to this section, apply as nearly as may be in relation to the Judicial and Legal Services Commission conducting inquiries under subsection (4) or, as the context may require, to the members of that Commission as it applies to Commissions or Commissioners appointed under that Law.
- (6) If the question of removing a judge of the Court of Appeal from office has been referred to the Judicial and Legal Services Commission under subsection (4), the Governor may suspend the judge from performing the functions of his or her office, and any such suspension may at any time be revoked by the Governor, and shall in any case cease to have effect –
  - (a) if the Judicial and Legal Services Commission advises the Governor that he or she should not request that the question of the removal of the judge from office should be referred by Her Majesty to the Judicial Committee; or
  - (b) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.
- (7) The powers conferred on the Governor by this section shall be exercised by the Governor acting in his or her discretion.”

## **Key Developments 2010-2015**

### **Judicial and Legal Services Bill**

The JLSC believes that bespoke legislation is required to address its role and functions. It does not believe that that legislation has to be extensive, and indeed takes the view that it may be limited to just three principal subjects: its members' liability and indemnification; power to make its own rules and regulations (there is no need to set them all out in primary legislation); and freedom of information ("FOI").

As regards FOI, the JLSC believes that the nature of its work should exempt it entirely from freedom of information legislation.

The JLSC has asked to be consulted in advance if any legislation is proposed to add new office-holders to the JLSC's remit pursuant to Section 106(4)(f) of the Constitution.

### **Age of Retirement of Grand Court Judges**

The JLSC has taken the view that section 96(1)(a) of the Constitution was introduced to reflect a policy decision that the interests of the public in the Cayman Islands are likely to be best served if Grand Court Judges retire at age 65 years or (if later) at the end of the specified terms for which they were appointed.

The JLSC therefore takes the view that the power to extend conferred by section 96(1)(a) of the Constitution should be exercised only where there are good reasons why the judge should continue in office beyond his attainment of the age of 65 years, or (if later ) the expiry of the specified term for which he was appointed.

The Chief Justice disagrees with the JLSC's position, and in 2012 sought a review of a decision of His Excellency the then Governor Duncan Taylor regarding the retirement of a Grand Court judge by way of petition to the Privy Council. The Privy Council ruled that the appropriate forum for resolving the issue was through the Cayman Islands Grand Court (in the first instance). In June 2015 a pre-action letter was sent to Her Excellency the Governor on behalf of the Chief Justice, copied to the JLSC, indicating that leave to commence judicial review proceedings is now about to be sought in the Grand Court.

### **Appointment of Grand Court Judges**

The JLSC's view is that the power to appoint an Acting Grand Court Judge pursuant to Section 97(2) of the Constitution arises only when a post is vacant or where an existing office-holder is unable to perform the functions of his or her post: there is no power under the Constitution to appoint an Acting Grand Court Judge in other circumstances (where, for example, there is no vacancy, and the need is for an additional judge to assist in disposing of an overload of judicial work.). If additional Grand Court Judges are required to meet that need, then – in the view of the JLSC – they should be appointed under Section 96 as additional fee-paid judges.

## **Code of Conduct**

As mandated by the Constitution, in March 2012 the JLSC published a code of conduct for the Cayman Islands judiciary, including magistrates. A copy of that code of conduct is available in the appendix of this report or online.

The JLSC approached the task on the basis that such a code should be founded on the commonly-accepted values which were adopted by the international judicial community and known as the *Bangalore Principles of Judicial Conduct*.

The JLSC believes that adherence to those principles is essential if public confidence in the judiciary and magistracy is to be maintained.

The JLSC may from time to time revise or vary this code as circumstances require. Judges and magistrates, whenever appointed, are expected to adhere to the code as so revised or varied.

## **Complaints Procedure**

In March 2012 the JLSC published a complaints procedure in relation to Cayman Islands judicial office-holders (including magistrates) in accordance with its constitutional mandate. A copy of that complaints procedure is available in the appendix of this report or online.

While under that complaints procedure the JLSC considers complaints against the judiciary, it does not accept any complaint that is not on its required form or is anonymous or pseudonymous and/or where the complainant provides no, or insufficient, contact information.

Since publishing the complaints procedure the JLSC has received and dealt with nine complaints.

## **Recruitment Exercises**

Section 106(1) of the Cayman Islands Constitution Order 2009 (the “Constitution Order”) effectively provides that the power to make appointments to the offices stipulated in that section shall vest in the Governor, acting in accordance with the advice of the Judicial and Legal Services Commission.

The JLSC has established a standardised process to be followed for all recruitment exercises.

In the case of “Additional” positions, the JLSC has established panels of Acting Grand Court Judges and Acting Magistrates who are pre-approved for appointment as additional Grand Court Judges or additional Magistrates respectively in place of existing office-holders, as circumstances require. The JLSC reviews the lists of panels biennially.

It is anticipated that now that those panels have been created, additional appointments can be made from a Panel by the Court Administrator on behalf of the Chief Justice without the need for the JLSC’s advice or for it to be otherwise involved.

## Post of Director of Public Prosecutions – March 2011

# of total completed applications – 7

# of applications by sex of applicants

Males	6
Females	1

# of applications by countries of residence

Australia	1
Bermuda	1
Grand Cayman	2
Guyana	1
Jamaica	1
United Kingdom	1

# of applications by age ranges

40-49 years	4
50-59 years	3

# of applicants interviewed – 4

# of interviewees by sex of applicants

Males	3
Females	1

# of interviewees by countries of residence

Bermuda	1
Grand Cayman	2
United Kingdom	1

# of interviewees by age ranges

40-49 years	4
50-59 years	0

Candidate selected

Sex	Female
Country of Residence	Grand Cayman
Age Range	40-49 years

## Post of Grand Court Judge – May 2011

# of total completed applications – 41

# of applications by sex of applicants

Males	33
Females	8

# of applications by countries of residence

Anguilla	1
British Virgin Islands	1
Canada	7
Grand Cayman	4
Guyana	1
Jamaica	2
New Zealand	3
Scotland	1
Seychelles	1
Trinidad & Tobago	2
Turks & Caicos	1
United Kingdom	16
United States	1

# of applications by age ranges

30-39 years	2
40-49 years	11
50-59 years	19
60-69 years	9

# of applicants interviewed – 6

# of interviewees by sex of applicants

Males	4
Females	2

# of interviewees by countries of residence

Grand Cayman	2
Jamaica	1
Turks & Caicos	1
United Kingdom	2

# of interviewees by age ranges

30-39 years	0
40-49 years	3

50-59 years	3
60-69 years	0

Candidate selected

Sex	Male
Country of Residence	Turks & Caicos
Age Range	40-49 years

## Post of Magistrate – May 2011

# of total completed applications – 26

# of applications by sex of applicants

Males	10
Females	16

# of applications by countries of residence

Bahamas	1
Barbados	2
Belize	1
Bermuda	1
British Virgin Islands	2
Canada	3
Grand Cayman	3
Guyana	3
Jamaica	1
St. Lucia	1
Trinidad and Tobago	2
Uganda	1
United Kingdom	3
United States	2

# of applications by age ranges

< 29 years	1
30-39 years	11
40-49 years	7
50-59 years	5
60-69 years	2

# of applicants interviewed – 4

# of interviewees by sex of applicants

Males	2
Females	2

# of interviewees by countries of residence

Bermuda	1
Canada	1
Grand Cayman	1
St. Lucia	1

# of interviewees by age ranges

30-39 years	1
40-49 years	1
50-59 years	2

Candidate selected

Sex	Male
Country of Residence	Grand Cayman
Age Range	50-59 years

## Post of Magistrate – October 2011

# of total completed applications – 34

# of applications by sex of applicants

Males	24
Females	10

# of applications by countries of residence

Australia	1
Bermuda	1
Canada	2
Grand Cayman	3
Jamaica	2
Montserrat	1
Scotland	1
Sri Lanka	1
Turks & Caicos	1
United Kingdom	20
West Africa	1

# of applications by age ranges\*

< 29 years	1
30-39 years	9
40-49 years	10
50-59 years	11
60-69 years	2

\*1 unknown

# of applicants interviewed – 5

# of interviewees by sex of applicants

Males	1
Females	4

# of interviewees by countries of residence

Bermuda	1
Grand Cayman	1
Jamaica	1
Montserrat	1
United Kingdom	1

# of interviewees by age ranges

30-39 years	1
40-49 years	3

50-59 years	1
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Candidate selected

Sex	Female
Country of Residence	Bermuda
Age Range	30-39 years

## Post of Justice of the Court of Appeal – July 2012

# of total completed applications – 6

# of applications by sex of applicants

Males	5
Females	1

# of applications by countries of residence

Grand Cayman	1
Jamaica	1
South Africa	1
United Kingdom	3

# of applications by age ranges

40-49 years	1
50-59 years	1
60-69 years	4

# of applicants interviewed – 4

# of interviewees by sex of applicants

Males	4
Females	N/A

# of interviewees by countries of residence

Grand Cayman	1
Jamaica	1
United Kingdom	2

# of interviewees by age ranges

50-59 years	0
60-69 years	4

Candidate selected

Sex	Male
Country of Residence	United Kingdom
Age Range	60-69 years

## Post of Panel of Acting Grand Court Judges (Undefined # of Positions) – March 2013

# of total completed applications – 28

# of applications by sex of applicants

Males	23
Females	5

# of applications by countries of residence

Cambodia	1
Falkland Islands	1
France	1
Grand Cayman	1
South Africa	1
Turks & Caicos	1
United Kingdom	21
United States	1

# of applications by age ranges

40-49 years	5
50-59 years	14
60-69 years	9

# of applicants interviewed – 11

# of interviewees by sex of applicants

Males	9
Females	2

# of interviewees by countries of residence

Turks & Caicos	1
United Kingdom	10

# of interviewees by age ranges

40-49 years	0
50-59 years	4
60-69 years	7

Candidates selected (x7)

Sex	Male (x5) Females (x2)
Country of Residence	Turks & Caicos (x1) United Kingdom (x6)
Age Range	50-59 years (x2) 60-69 years (x5)

## Post of Panel of Acting Grand Court Judges (Undefined # of Positions) – June 2013

# of total completed applications – 8

# of applications by sex of applicants

Males	5
Females	3

# of applications by countries of residence

Anguilla	1
Bermuda	1
Jamaica	5
St. Lucia	1

# of applications by age ranges

40-49 years	2
50-59 years	3
60-69 years	3

# of applicants interviewed – 7

# of interviewees by sex of applicants

Males	4
Females	3

# of interviewees by countries of residence

Anguilla	1
Jamaica	5
St. Lucia	1

# of interviewees by age ranges

40-49 years	0
50-59 years	4
60-69 years	7

Candidates selected (x6)

Sex	Male (x3) Females (x3)
Country of Residence	Jamaica (x5) St. Lucia (x1)
Age Range	40-49 years (x2) 50-59 years (x2) 60-69 years (x2)

## Post of Justices of the Court of Appeal (3 Positions) – August 2013

# of total completed applications – 9

# of applications by sex of applicants

Males	9
Females	0

# of applications by countries of residence

Scotland	1
St. Vincent	1
United Kingdom	7

# of applications by age ranges

60-69 years	7
70-79 years	2

# of applicants interviewed – 5

# of interviewees by sex of applicants

Males	5
Females	N/A

# of interviewees by countries of residence

Scotland	1
United Kingdom	4

# of interviewees by age ranges

60-69 years	3
70-79 years	2

Candidates selected (x3)

Sex	Male (x3)
Country of Residence	United Kingdom (x3)
Age Range	60-69 years (x2) 70-79 years (x1)

**Post of Financial Services Division (Part-Time) (2 Vacancies) – October 2013**

# of total completed applications – 9

# of applications by sex of applicants

Males	5
Females	4

# of applications by countries of residence

Canada	1
Grand Cayman	1
Isle of Man	1
Trinidad & Tobago	2
United Kingdom	4

# of applications by age ranges

30-39 years	2
40-49 years	5
50-59 years	0
60-69 years	2

# of applicants interviewed – 0

**Post of Panel of Acting Magistrates (Undefined # of Positions) – November 2013**

# of total completed applications – 5\*

# of applications by sex of applicants

Males	1
Females	4

*\*2 expressions of interest were also received from existing Acting Magistrates who were exempted from interview process.*

# of applications by countries of residence

Canada	1
Grand Cayman	4

# of applications by age ranges

30-39 years	1
40-49 years	1
50-59 years	3

# of applicants interviewed – 4

# of interviewees by sex of applicants

Males	1
Females	3

# of interviewees by countries of residence

Grand Cayman	4
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# of interviewees by age ranges

30-39 years	1
40-49 years	1
50-59 years	2

Candidates selected (x3)

Sex	Male (x1) Females (x2)
Country of Residence	Grand Cayman (x3)
Age Range	30-39 years (x1) 40-49 years (x1) 50-59 years (x1)

## Post of Justice of the Grand Court – August 2014

# of total completed applications – 23

# of applications by sex of applicants

Males	13
Females	10

# of applications by countries of residence

Bahamas	2
Canada	1
Grand Cayman	2
Grenada	1
Guyana	1
Jamaica	5
Sri Lanka	1
St. Kitts	1
St. Lucia	1
St. Vincent	1
Trinidad and Tobago	2
Turks and Caicos	1
United Kingdom	4

# of applications by age ranges

30-39 years	2
40-49 years	10
50-59 years	9
60-69 years	2

# of applicants interviewed – 5

# of interviewees by sex of applicants

Males	2
Females	3

# of interviewees by countries of residence

Grand Cayman	2
Jamaica	2
St. Lucia	1

# of interviewees by age ranges

40-49 years	3
50-59 years	1
60-69 years	1

Candidate selected

Sex	Female
Country of Residence	Jamaica
Age Range	40-49 years

## Post of Justices of the Court of Appeal (4 Positions) – August 2014

# of total completed applications – 13

# of applications by sex of applicants

Males	12
Females	1

# of applications by countries of residence

Bahamas	1
Belize	1
Bermuda	1
Jamaica	1
United Kingdom	9

# of applications by age ranges

50-59 years	1
60-69 years	9
70-79 years	3

# of applicants interviewed – 6

# of interviewees by sex of applicants

Males	5
Females	1

# of interviewees by countries of residence

Bermuda	1
Jamaica	1
United Kingdom	4

# of interviewees by age ranges

50-59 years	1
60-69 years	4
70-79 years	1

Candidates selected (x4)

Sex	Male (x4)
Country of Residence	Jamaica (x1) United Kingdom (x3)
Age Range	60-69 years (x3) 70-79 years (x1)

## Post of Financial Services Division (Part-Time) (2 Vacancies) – August 2014

# of total completed applications – 7

# of applications by sex of applicants

Males	4
Females	3

# of applications by countries of residence

Grand Cayman	1
Trinidad & Tobago	2
United Kingdom	4

# of applications by age ranges

30-39 years	2
40-49 years	0
50-59 years	2
60-69 years	3

# of applicants interviewed – 4

# of interviewees by sex of applicants

Males	4
Females	0

# of interviewees by countries of residence

Grand Cayman	1
United Kingdom	3

# of interviewees by age ranges

30-39 years	0
40-49 years	0
50-59 years	1
60-69 years	3

Candidates selected

Sex	Male (x2)
Country of Residence	United Kingdom (x2)
Age Range	50-59 years (x1) 60-69 years (x1)

## Post of Panel of Acting Grand Court Judges (Undefined # of Positions) – June 2015

# of total completed applications –

# of applications by sex of applicants

Males	8
Females	3

# of applications by countries of residence

Canada	1
Grenada	1
Jamaica	1
St. Christopher & Nevis	1
St. Kitts	1
St. Lucia	1
United Kingdom	5

# of applications by age ranges

30-39 years	1
40-49 years	2
50-59 years	4
60-69 years	4

# JUDICIAL AND LEGAL SERVICES COMMISSION



# Code of Conduct

for the Cayman Islands judiciary

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This code 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.

9 March 2012

## A. INTRODUCTION

- [1] Section 106(10)(a) of the Cayman Islands Constitution Order 2009 (“the Constitution”) requires the Judicial and Legal Services Commission to draw up a code of conduct for the judiciary. The Commission has approached that task on the basis that such a Code should be founded on the commonly-accepted values which were adopted by the international judicial community some twenty years ago and have become known as the *Bangalore Principles of Judicial Conduct*. The Commission believes that those who accept appointment as judges and magistrates in the Cayman Islands will recognise those principles as fundamental to the proper discharge of the duties of their office, and that adherence to those principles is essential if public confidence in the judiciary is to be maintained.

The terms “judge” and “judiciary” as used herein include magistrates, save where indicated otherwise.

- [2] The stated purpose of the *Bangalore Principles* is:
- “To establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the Executive and the Legislature, and lawyers and the public in general, to better understand and support the judiciary”.**

The Commission adopts that statement as the purpose of this Code.

- [3] The *Bangalore Principles* are enshrined in a succinct statement of six core values:
- **Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.**
  - **Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.**
  - **Integrity is essential to the proper discharge of the judicial office.**
  - **Propriety and the appearance of propriety are essential to the performance of all of the activities of a judge.**
  - **Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.**

- **Competence and diligence are prerequisites to the due performance of judicial office.**

This Code is intended to embody those core values. It should be understood and applied accordingly.

- [4] The Commission recognises that it is impossible to foresee, or to make provision for, the whole spectrum of circumstances to which those principles may fall to be applied in practice. It recognises, also, that the application of the principles to particular circumstances may give rise to difficult questions on which there is room for reasonable differences in view. Those questions will need to be resolved as and when they arise. Nevertheless the Commission believes that the purpose of this Code will be served by setting out, under each of the six *Bangalore Principles*, propositions which are likely to command general acceptance in the Cayman Islands. Those propositions should be seen as establishing standards by reference to which judges will regulate their conduct. Conduct which falls below those standards will not meet legitimate public expectation.
- [5] The Commission may from time to time revise or vary this Code as circumstances shall require. Judges, whenever appointed, will be expected to adhere to the Code as so revised or varied.

## **B. INDEPENDENCE**

- [6] It is a fundamental principle of the rule of law under a democratic constitution that the judiciary is, and is seen to be, independent of both the Legislature and the Executive. Judicial independence is sometimes mistakenly perceived as a privilege enjoyed by judges, whereas in fact it is a cornerstone of our system of government in a democratic society and a safeguard of the freedom and rights of the citizen under the rule of law. The judiciary, whether viewed as an entity or by its individual membership, is and must be seen to be independent of the legislative and executive arms of government. The relationship between the judiciary and the other arms should be one of mutual respect, each recognising the proper role of the others. Judicial independence is underpinned by security of tenure and remuneration, and by the constitutional convention under which the Executive neither directs nor criticises the Judiciary. The Legislature acts only through measures passed in the Legislative Assembly.
- [7] The independence of the judiciary imposes obligations upon the judges to respect the proper role of the Legislature and the Executive. Judges cannot avoid determining politically contentious disputes if those are properly brought before them in legal proceedings; but they should take care not to express views in a judicial capacity which go beyond what is necessary for that purpose.
- [8] A judge should not make extra-judicial statements upon politically contentious matters. The general rule is that if a matter of public controversy calls for a response from the judiciary or

a particular court, it should come from the Chief Justice or with his or her approval. There will be cases in which it may assist public debate if individual judges provide information relating to the administration of justice and the functions of the judiciary, as explained in paragraph 26.8 below. But such cases are likely to be rare and the participation of individual judges in public debate requires careful consideration.

In particular:

- [8.1] If matters which affect the judiciary directly (for example, terms of service) become the subject of public comment or debate, the response (if any) on behalf of the judiciary should be made through the Chief Justice.
  - [8.2] Communication with the Executive on behalf of the judiciary is the responsibility of the Chief Justice. Such communication should be open and formal.
  - [8.3] Communication with political parties or members of the Legislative Assembly (other than purely social) or any appearance of political lobbying (for example, the signing of petitions) should be avoided.
  - [8.4] A judge should not make submissions or give evidence before any committee or similar body on a matter affecting the legal system without first consulting the Chief Justice.
- [9] Invitations from the Executive to undertake non-judicial functions (for example, service on commissions and working parties) should not be accepted without careful consideration whether such functions are compatible with the judicial function. Relevant considerations will be the impact upon judicial strength during the time of the secondment and any implications for judicial independence. It is expected that such invitations will be communicated by the Executive through the Chief Justice. If that is not so in any particular case, then the judge receiving the invitation should refer it to him. In any event, a judge should consult the Chief Justice before accepting it.
- [10] A judge must protect his or her independence by rejecting any attempt to influence his or her judicial decision other than by public advocacy in the courtroom. In particular, no judge can be directed as to his or her own judicial decision by any other judge. Consultation with colleagues when points of difficulty arise is important in the maintenance of standards. In performing judicial duties, however, the judge shall be independent of judicial colleagues and solely responsible for his or her decisions.
- [11] Membership of, or association with, political organisations is inconsistent with judicial independence and should be avoided.

[12] In the discharge of his or her judicial functions, a judge should keep in mind that collegiate support is an important element in the maintenance of judicial independence. He or she should show respect and support for his or her judicial colleagues, and should refrain from criticising or denigrating them in public or in private.

### **C. IMPARTIALITY**

[13] Impartiality is essential to the proper discharge of the judicial function. Indeed, independence may be seen as a means to that end.

[14] A judge must avoid both partiality (or bias) in fact and the appearance of partiality. Justice must both be done and be seen to be done.

[15] A judge who has the least doubt as to his or her ability to decide the issues before him or her impartially - because, for example, he or she recognises that he or she has actual bias arising from personal knowledge of the disputed facts, or from personal knowledge of the credibility (or lack of credibility) of one of the parties or a witness, or from a pre-disposition to take an unfavourable view of one of the parties individually or, more generally, of a class of litigants to which one of the parties may belong - must disqualify himself or herself and decline to hear the case.

[16] Appearance of partiality or bias can arise where bias does not exist in fact. The test is whether a reasonable, fair-minded and informed observer would reasonably conclude that there is a real possibility that the judge is not impartial. The appearance of partiality may be impossible to dispel: leaving the litigant – and the informed observer – with a sense of injustice which is destructive of confidence in judicial decisions.

[17] Circumstances which might lead a reasonable, fair-minded and informed observer reasonably to conclude that there is a real possibility that the judge is not impartial include (but are not limited to) an apparent conflict of interest, judicial behaviour on the Bench, or associations and activities off the Bench. In particular, a judge may give an appearance of bias by expressing views in relation to race, gender, religious belief or culture. Whether a judge's associations or conduct gives an appearance of bias may be very difficult for that judge to recognise or determine in advance or at the time. Where a judge concludes that (applying the relevant test) his or her associations or conduct may give an appearance of bias, he or she should disqualify himself or herself and decline to hear (or to continue hearing) the case.

[18] Apparent conflicts of interest can arise in many different situations. A judge must be alert to any appearance of bias arising out of connections with litigants, witnesses or their legal advisors. The parties should always be informed by the judge of facts within his or her knowledge which might reasonably give rise to a perception of bias or conflict of interest.

In particular:

- [18.1] A judge should disqualify himself or herself where he or she or (while he or she was in practice) his or her firm acted as a legal advisor in connection with the subject matter of the dispute which has given rise to the proceedings.
- [18.2] A judge should disqualify himself or herself if in a close relationship to litigants, witnesses or the legal advisors in the case.
- [18.3] A judge should disqualify himself or herself if he or she or a close relative or member of his or her household has, directly or indirectly, a financial, beneficial or other similar interest in the outcome of the proceedings. Such conflicts may arise out of current commercial or business activities, financial investments (including shareholding in public or private companies) or membership of or involvement with educational, charitable or other community organisations which may be interested in the litigation. Shareholdings in litigant companies or companies associated with litigants should be disclosed. They should always lead to disqualification if the shareholding is large or if the value of the shareholding would be affected by the outcome of the litigation. Where the shareholding is small, full disclosure should still be made.
- [18.4] A judge should give most careful consideration whether to disqualify himself or herself if the case raises issues in relation to which he or she has made public statements of firm opinion after appointment.
- [19] The question whether to disqualify himself or herself on the grounds of actual or apparent bias is, in the first instance, for the judge to consider and determine. A judge should be careful to avoid giving encouragement to attempts by a party to use procedures for disqualification illegitimately. There is a need to avoid the practice of “forum shopping” by litigants who raise objections on the ground of apparent bias without good reason to do so. Additionally, a judge will need to have in mind, amongst other matters: (i) the burden which will fall on other judges if he or she disqualifies himself or herself without good reason; (ii) the burden that will be imposed on the litigants if an appellate court reverses his or her decision not to disqualify himself or herself; and (iii) the possibility that a decision not to disqualify himself or herself may (if reversed on appeal) lead to an erosion of confidence in the judiciary. In the latter context a judge should have in mind that, although the fact that the appellate court reverses the judge’s decision not to disqualify himself or herself does not, of itself, imply that he or she lacked impartiality, that may not be the perception of the litigant or of the public. If the issue of apparent bias is raised before the judge has embarked on the hearing, it may be sensible for the judge to decline to sit in order to avoid adding that issue to the other contentious issues in the case.

## **D. INTEGRITY**

- [20] Lack of integrity in private dealings and financial affairs, such as would expose the judge to the censure of reasonable, fair-minded and informed persons, is incompatible with judicial office.
- [21] Judgments once finally delivered and released for publication must stand without further clarification or explanation. Where a decision is subject to inaccurate comment, any appropriate response should be from the Chief Justice. Generally the most effective response is to get the full text of the judgment into the public arena promptly.

## **E. PROPRIETY**

- [22] Judges should not behave in such a manner as would or might, in the eyes of a right-minded member of the public, bring themselves, the judiciary or the administration of justice into disrepute.
- [23] Appointment to the judiciary should not lead to social and civic isolation. Judges are not effective if isolated from the community which they serve; and the community is not well-served by judges whose personal development is arrested by judicial appointment. Judges are entitled to private and civic lives which are not stunted or disadvantaged by office. And, generally, judges should not be denied the right to act in protection of rights of property and other personal interests: nor, without good reason, should they be denied the freedoms of association and expression which they would otherwise enjoy.
- [24] Nevertheless a judge's conduct, both in and out of court, inevitably attracts closer public scrutiny than that of most other members of the community; and the standing of the judiciary as a whole may be adversely affected by conduct which, in others, would not attract serious criticism. Judges must accept some restrictions on conduct and activities as a consequence of appointment.
- [25] Those restrictions include the following:
  - [25.1] Breaches of the law are incompatible with the judicial obligation to uphold the law.
  - [25.2] A judge who deals judicially with the effects of alcohol abuse may well be seen as compromised if he or she is, himself or herself, an abuser of alcohol.
  - [25.3] A judge should not be a member of any social organisation which discriminates on the basis of race, sex, religion or national origin.

- [25.4] A judge should not be involved in the management or direction of charitable or civic organisations, the activities of which might reflect adversely upon his or her impartiality or standing or the discharge of his or her judicial duties. In particular, he or she should not be involved in an organisation in circumstances where (i) it is likely to be regularly involved in contested proceedings before the courts, (ii) its finances are unsound, (iii) his or her standing as a judge could be used to solicit funds; or (iv) its objectives include law reform or political change.
- [25.5] A judge should not provide legal or investment advice to charitable organisations.
- [25.6] A judge should not permit his or her name or title to appear on documents associated with an appeal for funds; nor should he or she personally solicit funds (or lend his or her name to fund-raising activities) on behalf of fund-raising organisations.
- [25.7] A judge should not give legal advice save, on a gratuitous basis, to close family members.
- [25.8] A judge should not act as advocate or negotiator for a family member in a legal dispute or matter.
- [25.9] A judge who chooses to act for himself or herself in a legal dispute or matter should not seek to advance the interests of himself or herself or his or her family by invoking his or her standing as the holder of judicial office.
- [25.10] A judge should not accept professional services (including, in particular, legal advice or representation) for no charge or at a charge that is less than the usual rate charged by the provider of those services.
- [25.11] A judge must not use his or her judicial office for personal advantage (whether financial, social or personal) or for the advantage or benefit of his or her family or friends.
- [25.12] A judge should not give character evidence in court proceedings save in response to a summons requiring him or her to attend as a witness.
- [25.13] A judge should not expect or accept a fee for the delivery of a paper at a legal conference.
- [25.14] A judge should not be a member of the committee of an extra-judicial body which exercises disciplinary powers, save in relation to members of the legal profession.

- [25.15] A judge must avoid personal and social relationships which are abusive or exploitative.
- [25.16] A judge should not associate with anyone whom he or she knows is likely not to observe the law. In particular, a judge should avoid circumstances in which he or she is present at a gathering or on premises which may contravene the law; or where there is a risk of associating with people who are involved in criminal activities.
- [25.17] A judge should not engage with the media without the prior approval of the Chief Justice.
- [25.18] A judge should avoid association with those who are engaged, whether as participants, witnesses, or otherwise, in cases currently before him or her.
- [25.19] A judge should not discuss with anyone (other than judicial colleagues) his or her cases, current or past.
- [26] Matters which are not to be seen as incompatible with judicial office, but where some degree of caution must be exercised, include the following:
- [26.1] A judge who is a trustee, board member or officer of an educational, religious or charitable organisation may participate in its decision-making, including decisions as to investments and legal rights and obligations. But a judge's primary responsibility is to fulfill his or her judicial duties. Extra-judicial responsibilities and interests should not be such as to interfere with the discharge of judicial duties; or of a scale which might detract from that primary responsibility.
- [26.2] A judge is not precluded from managing his or her own investments and those of his or her immediate family or a family trust; provided that he or she is not thereby distracted from his or her judicial duties. Caution is necessary if the investments are substantial or of a nature which is likely to give rise to controversy.
- [26.3] The delivery of papers on legal subjects at legal conferences should be seen as an obligation incidental to judicial office. A judge may accept reimbursement of travel and accommodation expenses incurred in providing and delivering such papers where the host organisation is an educational establishment or professional association. But care must be taken where the host is a private organisation associated with a particular cause or is a potential litigant before the courts or if the arrangements are unusually lavish. In such cases the judge should consult with the Chief Justice.

- [26.4] Acceptance of small gifts as a token of appreciation for participating in a public or private function is not, of itself, objectionable. But caution is necessary in respect of any significant benefit. A judge must be aware of the risks (i) that it may be suggested that he or she has exploited his or her standing as the holder of judicial office in order to obtain that benefit and (ii) that the benefit may be seen as an attempt to influence the judge in the performance of his or her judicial duties. In such cases the judge should consult with the Chief Justice.
- [26.5] Social contact between members of the Bench and the advocates who appear before them is a long-standing tradition. But a judge should avoid direct social contact with practitioners who are engaged in cases currently before him or her where that might give rise to the appearance of bias.
- [26.6] A judge is not precluded from providing a letter of recommendation based on his or her personal knowledge of the individual concerned. But he or she should be aware of the need for caution lest his or her recommendation be seen to indicate judicial endorsement of an applicant for an appointment; and should consider carefully whether it is appropriate for a letter of recommendation be written on judicial stationery.
- [26.7] A judge should attend as a witness in answer to a summons served upon him or her by a party; but, in giving evidence, he or she should be careful not to invoke the special standing which attaches to the holder of judicial office. In particular, he or she should consider carefully whether it is appropriate for him or her to give evidence as to character; and, generally, should decline to do so unless that course would unfairly deprive a defendant to criminal proceedings of the ability to prove some fact which was within the special knowledge of the judge.
- [26.8] A judge may, with the prior approval of the Chief Justice, write articles or give interviews for the purpose of informing the public as to the administration of justice in general terms. In considering whether to accept an invitation to do so, he or she should ask himself or herself whether the proposed article or interview is likely to have the beneficial effect of raising public awareness of the judicial function. But he or she should not express views in articles and interviews which may be thought to pre-determine issues which may arise for judicial determination or which trespass into areas of political controversy. He or she should be aware of the risks associated with unscripted television and radio broadcasts; and should not take part in such broadcasts without the prior approval of the Chief Justice.
- [26.9] A judge may write on legal topics for publication – provided that he or she is not thereby distracted from his or her judicial work – and may receive royalties or other payment for publication of his or her written work. Again, a judge should

take care that, in his or her extra-judicial written work, he or she does not appear to pre-determine issues which may come before the court in litigation or to criticise the decisions of those who are currently his or her judicial colleagues.

- [27] A judge should recognise and accept the need not only to observe high standards of personal conduct but also to encourage and support his or her judicial colleagues to observe similar standards. Questionable conduct by one judge reflects on the judiciary as a whole. A judge who becomes aware of evidence which, in his or her view, is reliable and indicates a strong likelihood of conduct by another judge which falls below the standards required by this Code must give serious consideration to the action which he or she should take; having regard to the overriding need to maintain the public interest in the due administration of justice. Appropriate action will depend on the particular circumstances; but may involve informal counselling, consultation with or a more formal report to the Chief Justice or the Judicial and Legal Services Commission. “Turning a blind eye” is not an acceptable option.
- [28] Following his or her retirement from office, a judge shall not appear in court as an advocate. That prohibition shall not apply to magistrates.

## **F. EQUALITY OF TREATMENT**

- [29] A judge must determine the cases before him or her according to law. He or she must not be deflected by desire for popularity or fear of criticism.
- [30] A judge must hear a case on the evidence and in accordance with the principles of natural justice. He or she must not allow one party to make representations to him or her in the absence of, or to the exclusion of, the other; save where the circumstances require that, in the interests of justice, an application is made without notice.
- [31] A judge must conduct himself or herself with courtesy to all, and must require similar courtesy of those appearing in court. He or she should be alert to protect parties or witnesses from discourtesy or displays of prejudice based on racial, sexual, religious or other grounds. Punctuality, patience and tolerance are essential judicial qualities.
- [32] A judge must be firm in maintaining proper conduct during a hearing before him or her. Judicial intervention should be limited to the minimum necessary to clarify the evidence or to elucidate the submissions made to the judge. A judge should take care that his or her interventions, where necessary for those purposes, do not lead to the perception that he or she has reached a conclusion without hearing all the evidence and all the submissions; or, in the case of criminal trials before a jury, that he or she has formed a view as to the guilt or innocence of the accused.
- [33] A judge from whose decision or conduct of proceedings an appeal is pending or under consideration should have no private communication with the appellate court.

## **G. COMPETENCE AND DILIGENCE**

- [34] A judge is expected to be competent in the discharge of his or her judicial duties, both generally and pursuant to Clause 7 of the Bill of Rights, Freedoms and Responsibilities comprising Part 1 of the Constitution of the Cayman Islands. Without prejudice to the generality of the foregoing, he or she must display intellectual honesty in the reasoning on which his or her decisions are based; he or she must strive to dispose of his or her work promptly, delivering his or her judgments in a timely manner; and he or she must be ready and willing to undertake a fair share of the work of the court.
- [35] It is a judge's professional duty to do all he or she reasonably can to equip himself or herself to discharge his or her judicial duties with a high degree of competence and efficiency. This should include the attendance at judicial seminars and symposia where these are made available as part of continuing judicial education and training.
- [36] A judge should strive to deliver reserved judgments as soon as possible and in any event within such period as may from time to time be prescribed by the Chief Justice or the President of the Court of Appeal, as the case may be. If the judge becomes aware that his or her judicial commitments (or other circumstances) may prevent him or her from delivering judgment within that time, he should alert the Chief Justice to that possibility.

## JUDICIAL AND LEGAL SERVICES COMMISSION



# Complaints Procedure

in relation to the Cayman Islands judiciary

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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 February 2015

## 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) In the case of a complaint initiated by the Commission of its own motion and in other cases unless it dismisses a complaint under Part 2 above or the complaint alleges a criminal offence the Complaints Committee 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.

- (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 complaintto 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)

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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 C – Further information**

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**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.

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**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.

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**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

## Members 2010-2015



**Dan Scott, OBE**, was appointed as Chairman of the JLSC in accordance with section 105(1)(a).

Dan Scott is the Regional Managing Partner and Asset Management Sector Leader for the Bahamas, Bermuda and Cayman Islands region of Ernst & Young's Financial Services Office. He is also a member of the Ernst & Young Global Hedge Fund Steering Committee, which provides strategic direction to the global practice.

Mr. Scott has been with Ernst and Young for more than 25 years. Among his areas of focus are audit and advisory services, including structuring and servicing complex global and offshore funds. Mr. Scott received a B.Sc. in accounting from the University of Tampa.

He is a member of the American Institute of Certified Public Accountants. He is currently a Board Member of the Cayman Islands Stock Exchange and a Member of the Cayman Islands National Security Council. He is a past President of the Cayman Islands Society of Professional Accountants.

Mr. Scott was appointed an Officer of the Most Excellent Order of the British Empire (OBE) in June 2015.

Mr. Scott served as Chairman from 1 August 2010 to 31 July 2015.



**Dara Flowers-Burke** was appointed to the JLSC in accordance with section 105(1)(a).

Mrs. Flowers-Burke graduated from John Gray High School as Student of the Year, and furthered her studies at the University of Southern California where she earned a Bachelor of Fine Arts in Filmmaking (Cum Laude) with a minor in Communication.

Upon completion of her formal education, Mrs. Flowers-Burke lived as a writer in Los Angeles. She has worked at the Flowers Group of companies since 2004, where initially, as the Marketing and Communications Manager, she led the strategic corporate rebrand of the Group. In 2006, she oversaw the organisational and infrastructure modernisation of the sixty year old company, earning her an appointment to the Board of Directors.

Mrs. Flowers-Burke serves as a Director on the Cayman Turtle Farm Board as well as Coordinator of the ever-popular Flowers Sea Swim.

Mrs. Flowers-Burke served as a member of the JLSC from 1 August 2010 to 31 July 2013 at which time she was reappointed to serve from 1 August 2013 to 31 July 2014.



**Sir John Chadwick**, as President of the Cayman Islands Court of Appeal is an ‘ex-officio’ member of the JLSC appointed to it in accordance with section 105(1)(b).

Sir John was called to the Bar of England and Wales by Inner Temple in 1966 (Bencher 1986, Treasurer 2004). He was in private practice, undertaking litigation and advisory work principally in property, company, insolvency, banking and insurance matters (including litigation in Singapore, Malaysia, Hong Kong and Bermuda), from 1967 to 1991.

He was Standing Counsel to the UK Department of Trade and Industry, 1974 to 1980; appointed Queen’s Counsel in 1980; a Judge of the Courts of Appeal of Jersey and Guernsey, 1986 to 1993; a Recorder of Crown Courts in England and Wales, 1989 to 1991; a judge of the High Court of England and Wales assigned to the Chancery Division, 1991 to 1997; Chancery Supervising Judge, Birmingham, Bristol and Cardiff, 1993 to 1997; appointed to HM Privy Council 1997; and a judge of the Court of Appeal of England and Wales, 1997 to 2007.

In 2008 Sir John was appointed Judge of the Dubai International Financial Centre Courts and was appointed Deputy Chief Justice in 2013; Lieutenant Bailiff (Judge) in Guernsey and President of the Court of Appeal of the Cayman Islands. In 2009 he was appointed a member of the Dubai World Special Tribunal.

Sir John has served on the JLSC since 1 August 2010. This term automatically expires in January 2016 when he is due to retire as President of the Cayman Islands Court of Appeal.



**Justice Sir Edward Zacca**, JA, OJ, was appointed in accordance with section 105 (1) (c).

Sir Edward was Chief Justice of the Jamaican Supreme Court from 1985 to 1996 and in accordance with the Constitution of Jamaica as Chief Justice he served as Acting Governor General of Jamaica from March to August 1991.

Sir Edward has had a long association with the Cayman Islands, beginning in 1967 when he presided in the Grand Court over one of the then rare murder trials. Prior to the establishment of the Cayman Islands Court of Appeal in 1984 he was a member of the Jamaica Court of Appeal which heard appeal cases from Cayman. He served as President of the Cayman Islands Court of Appeal from 1984 to 2008 and also served on the Bahamas Court of Appeal from March 2000 to July 2001.

Sir Edward is currently President of the Bermuda Court of Appeal, a position he has occupied since 2004, having served as an appeal judge since 1996 in that jurisdiction.

Sir Edward was appointed Knight Commander of the Order of St Michael and St George in June 2015.

Sir Edward served as a member of the JLSC from 1 August 2010 to 31 July 2013, and was reappointed to serve from 1 August 2013 to 31 July 2014.



The late **Sir Richard Ground** was appointed to the JLSC in accordance with section 105(1)(d).

Sir Richard served as Chief Justice of Bermuda from 2004 to 2012. Before that he served as Chief Justice of the Turks & Caicos Islands from 1998 to 2004, and as a Judge of the Supreme Court of Bermuda from 1992 to 1998.

He began his legal career in private practice at 1 Brick Court, Middle Temple, where he specialized in media law from 1976 to 1983. In 1983 he moved to the Cayman Islands as Senior Crown Counsel, and was Attorney General of the Cayman Islands from 1987 to 1992.

Sir Richard was born on 17th December 1949, in Stamford, England, and educated at Oakham School; Lincoln College, Oxford; and the Inns of Court School of Law. He won an open scholarship to Oxford in 1967 and the Violet Vaughan-Morgan University prize for literature in 1968. He graduated with a BA Hons in English Language and Literature in 1970.

Sir Richard was called to the Bar, in Gray's Inn, in 1975; was appointed Queens Counsel (Cayman Islands) in 1987; and was awarded an OBE in the New Year's Honours List 1991 for his services as Attorney General in Cayman.

His professional publications include *Halsbury's Laws, 4th ed., Vol. 22, "Hire Purchase and Consumer Credit"* with Brian Neill QC; *Halsbury's Laws, 4th ed., Vol. 36, "Pledges and Pawns"*; and he was the precedents editor for the 1981 edition of *Gatley on Libel and Slander* (Common Law Library No. 8), Sweet & Maxwell, London 1981. He has also published *Creator's Glory*, a book of photographs of the wildlife of the Cayman Islands; and *The Birds of the Turks & Caicos Islands*.

Sadly, Sir Richard died in May 2014. He served as a member of the JLSC from 1 August 2010 to 22 February 2014.



**Baroness Patricia Scotland** was appointed to the JLSC in accordance with section 105(1)(d).

Baroness Scotland has had an exceptionally distinguished career in the law. She gained her LLB (Hons) in 1976 and was called to the Bar in 1977. She was appointed Queen's Counsel in 1991.

Baroness Scotland was created a Peer in 1997 and served in several ministerial positions in the Labour Government, including as Her Majesty's Attorney General for England, Wales and Northern Ireland from July 2007 to May 2010. She was appointed as an Assistant Recorder in 1991, a Deputy High Court Judge in the Family Division in 1995, and a Recorder in 2000. Baroness Scotland is currently in private practice in London and serves as a Member of the House of Lords.

Baroness Scotland has received many awards for her achievements; and is a member of numerous advisory committees in the UK.

Baroness Scotland served as a member of the JLSC from 12 September 2012 to 31 July 2015.



**Sir David Anthony Simmons** K.A., B.C.H., Q.C., LL.M. (Lond.) was appointed to the JLSC in accordance with section 105(1)(d).

Sir David entered the Faculty of Law at the London School of Economics and Political Science in 1960 and graduated with an LL.B. degree in 1963. He was awarded an LL.M. degree in 1965. Sir David lectured in law in London until his return to Barbados in 1970.

Between 1970 and 1974, Sir David was a part-time lecturer in law at the Faculty of Law of the University of the West Indies. Sir David has had an outstanding career as a lawyer in Barbados and was appointed Queen's Counsel in 1984. He served continuously for 25 years in the Parliament of Barbados from February 1976 to August 2001, on which date he retired from active politics. Twice he served as Attorney-General of Barbados; first, from 1985 to 1986, and, more recently, from September 1994 to August 2001.

On many occasions during the latter period, Sir David acted as Prime Minister of Barbados. He assumed office as the 12th Chief Justice of Barbados on 1 January 2002. In 2003, he was made an Honorary Fellow of the U.W.I. and was also awarded the Honorary Degree of Doctor of Laws (LL.D.) by the University of London - the first Caribbean person to be accorded that high distinction by that University.

In 2006, Sir David was elected as an Honorary Bencher of the Honorable Society of Lincoln's Inn, the Inn of Court at which he qualified as a Barrister-at-Law. As Attorney-General, Sir David presided over many initiatives and esteemed conferences, including being Chairman of the Preparatory Committee to establish the Caribbean Court of Justice (1999 to 2001) and first Chairman of the Regional Judicial and Legal Services Commission (2003 to 2004).

In 2001, for his contribution to public service, law and politics, Sir David was awarded the Barbados Centennial Honour (B.C.H.), and Barbados' highest national honour, Knight of St. Andrew (K.A.). He is currently Chairman of the Integrity Commission in Turks and Caicos and Chairman of the Commission of Enquiry into the 1990 coup attempt in Trinidad.

Sir David served as a member from 1 August 2010 to 31 July 2014. He was reappointed to serve from 1 August 2014 to 31 July 2016.



**Richard Coles** was appointed to the JLSC in accordance with section 105(1)(e).

Mr. Coles studied at the College of Law in London and is a Fellow of the Caribbean Law Institute.

Mr. Coles is an experienced lawyer both in England and in the Cayman Islands, being a Solicitor admitted in England, a Cayman Islands Attorney-at-law and Notary Public. Prior to coming to the Cayman Islands he was the founding partner of a substantial firm of solicitors with offices in England. From 1992 to 1999 he was the Attorney General for the Cayman Islands and a Member of the Cabinet and Legislative Assembly. Mr. Coles is a member of the Law Society of England, the Commonwealth Lawyers Association, the Commonwealth Parliamentary Association, and the Institute of Advanced Legal Studies in London.

Mr. Coles also has the distinction of being a Freeman of the City of London. He held the position of Chair of the Cayman Islands Human Rights Commission from 2 January 2010 to 1 January 2014.

Mr. Coles served as a member from 1 August 2010 to 31 July 2015. He has been reappointed to serve from 1 August 2015 to 31 July 2016.



**Charles Jennings** was appointed to the JLSC in accordance with section 105(1)(e).

Mr. Jennings is a former Cayman Islands attorney-at-law and worldwide managing partner of the Cayman Islands law firm of Maples and Calder. He practiced with them from 1986 until his retirement in 2009, becoming partner in 1992.

Mr. Jennings was President of the Cayman Islands Law Society from 2001 until his retirement in October 2012. He is Chairman of the Cayman Islands Financial Services Legislative Committee and is actively involved with several Cayman Islands businesses and non-profit programmes.

Mr. Jennings served as a member from 1 August 2010 – 31 July 2015. He has been reappointed to serve from 1 August 2015 to 31 December 2016.