
STATUTORY INSTRUMENTS

2006 No. 676

**The Judicial Discipline (Prescribed
Procedures) Regulations 2006**

PART 5

Judicial Investigation

Nomination of investigating judge

20.—(1) When a case is to be subject to judicial investigation, the Lord Chief Justice with the agreement of the Lord Chancellor shall nominate a judicial office holder or a former judicial office holder to be the investigating judge.

(2) The investigating judge must be of a higher judicial rank than the subject of the disciplinary proceedings.

(3) In relation to a former judicial office holder, reference to his judicial rank means the rank he held immediately before he ceased to hold judicial office.

Terms of reference of investigating judge

21.—(1) The terms of reference for the investigation by the investigating judge shall be such as the Lord Chancellor and the Lord Chief Justice may agree.

(2) The investigating judge may ask the Lord Chancellor and the Lord Chief Justice to amend his terms of reference.

(3) Any changes to the terms of reference shall be such as the Lord Chancellor and the Lord Chief Justice may agree.

Functions of investigating judge

22. The investigating judge must advise the Lord Chancellor and the Lord Chief Justice—

- (a) as to the facts of a case;
- (b) whether the case is substantiated or not;
- (c) whether disciplinary action should be taken; and if so what disciplinary action should be taken; and
- (d) as to any other matters in his terms of reference.

Procedure of investigation by investigating judge

23.—(1) The investigating judge may decide how to conduct his investigation, but he must—

- (a) notify the subject of the disciplinary proceedings and any complainant of his proposals for the conduct of his investigation, and whether he proposes to take oral evidence;

- (b) invite the subject of the disciplinary proceedings and any complainant to make representations on his proposals; and
 - (c) record any representations on the proposals which those persons may make.
- (2) Representations must be provided to the investigating judge within ten business days of the invitation under paragraph (1)(b).

Evidence and representations

24.—(1) The investigating judge must invite the subject of the disciplinary proceedings to give evidence and make representations about the case.

(2) The investigating judge may invite the complainant or any person who he considers can assist his investigation to give evidence about the case.

(3) Evidence and representations must be provided to the investigating judge within ten business days of the invitation under paragraphs (1) and (2).

(4) The investigating judge may take oral evidence if he considers it necessary to do so.

(5) The investigating judge must arrange for any evidence given orally to be recorded in a transcript or a tape recording.

(6) The investigating judge must disclose any evidence obtained under paragraph (2) to the subject of the disciplinary proceedings and must invite him to make representations on the evidence.

(7) The subject of the disciplinary proceedings must make any representations under paragraph (6) within ten business days of the invitation under paragraph (6).

(8) 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 disciplinary proceedings, he must first invite—

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

to make representations about the proposed disclosure.

(9) The person who provided the evidence and the subject of the disciplinary proceedings must make representations under paragraph (8) within ten business days of the invitation.

Report of investigating judge

25.—(1) Subject to his terms of reference, the investigating judge may decide the form and content of his report.

(2) The investigating judge must disclose a draft of his report to the subject of the disciplinary proceedings and invite him to make representations about it.

(3) The investigating judge must disclose a draft of his report to any complainant and invite him to make representations about it.

(4) The investigating judge may show a draft of his report to any other person, and invite him to make representations about it.

(5) Disclosure of the draft report under paragraphs (3) or (4)—

- (a) may be of the whole or part,
- (b) may be in the form of a summary, and
- (c) must omit any information the disclosure of which is prohibited under section 139 of the Act.

(6) Representations must be provided to the investigating judge within ten business days of disclosure of the draft report under paragraphs (3) or (4).

(7) After considering any representations made in accordance with paragraphs (2) to (4) and (6) the investigating judge must—

- (a) complete his report and submit it to the Lord Chancellor and the Lord Chief Justice, with details of any requested changes which he has not made;
- (b) send a copy of his report to the subject of the disciplinary proceedings; and
- (c) send a copy of his report or the relevant part of his report to any other person who has been invited to make representations about the draft report, but omitting any material the disclosure of which is prohibited under section 139 of the Act.