Ministry of Justice

Courts and Tribunals Judiciary

Judicial Discipline

Response to Consultation

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COURTS AND TRIBUNALS JUDICIARY

Judicial Discipline

Response to Consultation

Response to consultation by the Lord Chancellor and Lord Chief Justice of England and Wales.

This information is also available at https://consult.justice.gov.uk/

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Foreword

We are very grateful to the individuals, judicial associations and other bodies who took the time to respond to this consultation. We have considered the responses carefully. We are pleased to set out our response in this report.

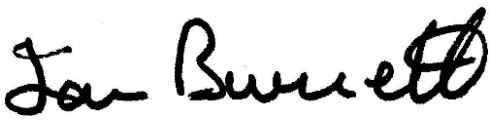
The judiciary of England and Wales is regarded as one of the best in the world. Alongside independence and expertise, high standards of personal behaviour play an important part in maintaining the exceptional reputation of our 20,000 judicial office-holders.

We regard it as vital to public confidence in the judiciary that action is taken on those rare occasions when judicial office-holders do not behave as they should. A fair and effective disciplinary system is vital to achieving that aim.

The current disciplinary system was established nearly a decade ago. In many ways, it has stood the test of time well. However, as we said in the consultation document, it is not without drawbacks, particularly the length of time it takes to deal with a small proportion of complaints and scope for greater transparency.

We believe that the changes set out in this report will help to create an improved disciplinary system that, while preserving what already works well, will enable complaints about misconduct by judicial office-holders to be dealt with in a more timely, proportionate and transparent way.

The Right Honourable
Dominic Raab MP
Lord Chancellor & Secretary of State for Justice



The Right Honourable
Lord Burnett of Maldon
Lord Chief Justice

Introduction and contact details

This document is the post-consultation report for the consultation document: *'Judicial Discipline – Consultation on proposals about the judicial disciplinary system in England and Wales'*. It contains:

- An executive summary of the report
- The background to the report
- A summary of responses to the consultation
- A detailed response to the questions asked in the consultation paper
- The next steps following the consultation.

Further copies of this report and the consultation document can be obtained by contacting:

Judicial Conduct Investigations Office
80-82 Queen's Building
Royal Courts of Justice
Strand
London, WC2A 2LL

disciplinary.consultation@judicialconduct.gov.uk

Alternative format versions of the report can be requested via the contact details above.

The report is also available at: https://consult.justice.gov.uk

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Judicial Conduct Investigations Office at the above address.

Background

The proposals in the consultation document were developed following a year-long review carried out by a working group formed by Dame (then Lady Justice) Rafferty DBE and, following her retirement in July 2020, chaired by Lady Justice Carr DBE. The group's members included judges, officials from the Judicial Conduct Investigations Office (JCIO), Judicial Office, Her Majesty's Courts and Tribunals Service (HMCTS) and the Ministry of Justice, and a lay disciplinary panel member.

The working group's overarching aim was:

> 'To review the judicial disciplinary system in England and Wales, and to make recommendations to ensure that the consideration of complaints about misconduct is proportionate, efficient, fair and strikes the right balance between confidentiality and transparency.'

The formal public consultation on 41 proposals developed from the review began on 15 November 2021 and ended on 7 February 2022. Those proposals covered a range of subjects including the purpose of the disciplinary system, classification of misconduct, remit of the JCIO, complaints-handling processes, disciplinary sanctions, transparency and diversity.

Summary of responses

A total of 57 responses to the consultation were received. There was a roughly even split between responses from individuals such as members of the public and judicial office-holders and from judicial associations and other bodies.

Although the number of responses was relatively small, there were numerous detailed, informative and supportive responses. The responses have been considered carefully to assess the potential impact of, and the level of support for, each of the proposals in the consultation document.

Overall, there was convincing support for all but a few of the 41 proposals in the consultation document, including:

- Transferring responsibility for dealing with complaints about tribunal members from chamber presidents to the JCIO
- Introduction of an expedited procedure for lower level disciplinary cases in which the facts are agreed
- Continued use of nominated judges, investigating judges and disciplinary panels in the complaints-handling process, and including circuit, district and salaried tribunal judges and coroners in the pool of nominated judges
- Measures to streamline and simplify the complaints-handling process
- Rebalancing disciplinary panel membership (currently two judges and two lay members) to a lay majority (one judge and two lay members)
- Continued use of regional conduct advisory committees to consider complaints about magistrates under a separate set of statutory rules
- A period of suspension (without pay for salaried office-holders) to be available as a sanction for misconduct in cases which fall just short of removal from office
- Measures to improve transparency, including more detailed disciplinary statements with longer publication periods and a more detailed JCIO annual report
- Measures to promote diversity in the disciplinary system, including mandatory diversity training for the judges and lay people who have roles in the system and development of a diversity outreach strategy.

Analysis of responses to individual questions

The purpose of the disciplinary system and the JCIO's remit

Q1: Do you agree that the purpose of the judicial disciplinary system should be formally defined? If so, do you agree with the proposed definition?

1. In the consultation document we proposed that the purpose of the disciplinary system should be formally defined, particularly given the need to acknowledge the distinction between misconduct, which can be dealt with under the system, and issues which cannot, such as challenges to judicial decisions. We proposed the following definition:

> 'The purpose of the judicial disciplinary system is to promote public confidence in the independence, reputation, and good standing of the judiciary by ensuring that allegations of misconduct are dealt with efficiently, fairly and proportionately.'

2. A total of 41 respondents answered this question. Of those, 40 agreed that the purpose of the disciplinary system should be formally defined. Of those 40, 32 agreed with the proposed definition. Nine respondents suggested that the definition would benefit from revision. One respondent did not express a clear position on the question.

3. While most respondents agreed with the proposed definition, a small number questioned the prominence given to promoting public confidence in the judiciary. One respondent, for example, suggested that the emphasis should be on dealing effectively with misconduct and providing redress for complainants.

4. A few respondents argued that, while a definition would be helpful, the proposed wording would not help the public to understand what sorts of complaints are within the scope of the system, some suggesting that a definition of misconduct should be incorporated.

Our response

5. We agree with the majority of respondents that a formal definition of the purpose of the disciplinary system will be beneficial. Although most respondents who expressed a view agreed with the proposed definition, we agree on reflection with those who suggested that maintaining public confidence in the judiciary, while undoubtedly important, should not be presented as the primary purpose of the system. We have therefore decided to revise the definition as follows:

> ‘The purpose of the judicial disciplinary system is to ensure that allegations of misconduct are dealt with efficiently, fairly and proportionately, and that public confidence in the independence, integrity and good standing of the judiciary is thereby maintained.’

6. This emphasises that the main purpose of the disciplinary system is to ensure that allegations of misconduct are dealt with properly, rather than to promote public confidence in the judiciary (which is nevertheless an important by-product).

Q2: Do you agree that the disciplinary system should continue to be based on the concept of misconduct, and that misconduct should be categorised as minor, serious or gross?

7. A total of 41 respondents answered this question. Of those, 37 agreed that the disciplinary system should continue to be based on the concept of misconduct. Of those 37, 30 commented on the proposed classification of misconduct as minor, serious or gross. A total of 25 respondents agreed with the proposed classification and five disagreed. Four respondents did not express a clear position on the question.

8. While there was strong support for the disciplinary system continuing to be based on the concept of misconduct, principally to maintain the distinction between issues that are within, and those that are outside, the scope of the system, some respondents argued that more should be done to make clear to complainants what sorts of complaints fall within the scope of the system. One respondent, for example, argued that the lack of any definition of misconduct discourages professional court users in identifying whether actions they wish to complain about could amount to misconduct. Others suggested that the answer lay in ensuring that complainants are provided with clear guidance about the scope of the system.

9. Regarding the proposed classification of misconduct as minor, serious or gross, while again most respondents were in favour, a small number argued for different classifications. One respondent, for example, suggested an additional category of ‘criminal misconduct’. A few respondents raised questions about when the categories would be applied to a complaint and by whom. A concern was raised about whether categorisation at an early stage would prevent a complaint that appeared initially to be minor in nature, but which turned out to be more serious, being dealt with properly. Another issue raised by a few respondents was that referring to an act of misconduct as ‘minor’ could be seen as trivialising it.

Our response

10. We agree with the majority of respondents that the disciplinary system should continue to be based on the concept of misconduct. While we agree that clarity about the types of complaints which fall within the scope of the system is important, we

remain of the view expressed in the consultation document that a formal definition of misconduct would have to be so broad as to be of little practical use.

11. We agree with those respondents who referred to the importance of guidance for complainants. The JCIO website contains guidance about the types of complaints that can be accepted for consideration and the information complainants need to provide with a complaint. The guidance will be reviewed thoroughly and updated as part of the work to implement the finalised proposals in this report.

12. Regarding the classification of misconduct, while most of the respondents who commented on this aspect of the proposal supported the minor, serious, gross classification, we agree on reflection with those who suggested that the term 'minor misconduct' could be misinterpreted as trivialising misconduct. Although there are different degrees of seriousness, misconduct by a judicial office-holder is never a trivial matter. We have therefore decided to amend the classification as follows:
    - Misconduct
    - Serious Misconduct
    - Gross Misconduct.

13. We consider that this easily understood method of classification will provide a framework for consistent decision-making and aid public understanding of disciplinary decisions.

14. The classification of misconduct will not prevent the proper handling of complaints which may turn out to be more (or less) serious than they appeared initially. The process of investigating complaints will continue to be governed by robust statutory procedures. It will only be once those procedures have been complied with, and a complaint has been investigated fully, that a decision will be made. As now, it will be for the Lord Chief Justice (or his senior judicial delegate) and Lord Chancellor to agree that decision. It will be for them, having considered the recommendation of a nominated judge, an investigating judge, or a disciplinary panel, to decide whether an office-holder's actions amount to misconduct and, if so, the level of seriousness.

Q3: Do you agree that the JCIO should deal with complaints about tribunal members and chamber presidents?

15. In the consultation document we noted that, under the current procedures, complaints about tribunal chamber presidents are considered initially by the JCIO under the *Judicial Conduct (Judicial and other office-holders) Rules 2014*, whereas complaints about tribunal members are considered initially by chamber presidents under the *Judicial Conduct (Tribunals) Rules 2014*. In any case which has not been dismissed after initial consideration, the final decision rests jointly with the Lord Chief

Justice (or the Senior President of Tribunals[1]) and the Lord Chancellor. We proposed that responsibility for considering complaints about tribunal members should transfer from chamber presidents to the JCIO. This would mean the JCIO dealing with all complaints about tribunals judiciary (including chamber presidents) and non-legal members.

16. A total of 28 respondents answered this question. Of those, 25 agreed that the JCIO should be responsible for complaints about tribunal members. One respondent disagreed with the proposal. Two respondents did not express a clear position on the question.

17. Common themes in responses which supported the proposal included the benefits of reducing the burden on chamber presidents, the principle of one-judiciary, consistency of process, and separating disciplinary functions from the other roles of chamber presidents.

18. The respondent that did not agree with the proposal made several points. In summary:
    - Doubt that the JCIO would be able to investigate complaints efficiently and fairly, and whether civil servants have the knowledge and expertise to communicate effectively with vulnerable complainants
    - The involvement of leadership judges ensures that complaints are considered by people with relevant knowledge and experience
    - The potential for any conflict between a chamber president's pastoral and leadership roles and disciplinary role can be addressed by delegating responsibility to consider a complaint to another leadership judge
    - There would be no mechanism to enable lessons learnt from complaints to be passed on, or to ensure that any related pastoral issues are addressed
    - Doubt that the proposed change will result in savings,[2] and a question as to what extent chamber presidents, their judicial delegates and staff would still need to be involved in complaints
    - There would need to be a significantly greater level of judicial input and oversight than envisaged by the consultation document.

[1] The Lord Chief Justice has delegated his powers to deal with complaints about tribunal members in which the recommended sanction is up to a formal warning to the Senior President of Tribunals.

[2] The consultation document included a high-level assessment, derived from information provided by chamber presidents' offices, that judicial and staff time spent of dealing with complaints equates to a cost of approximately £280,000 per year whereas the extra cost to JCIO of taking on this additional work was estimated to equate to a cost of £170,000 per year.

Our response

19. We agree with the majority of respondents that the JCIO should be responsible for complaints about tribunal members. While we acknowledge the strength of feeling of the respondent that disagreed with the proposal, having considered the objections raised carefully, we believe that the arguments set out in the consultation document in favour of this change are compelling, namely:
    - A significantly reduced burden on chamber presidents (and their judicial delegates and staff)
    - Avoiding the risk of conflicts arising between the pastoral and leadership roles of a chamber president and disciplinary functions
    - A consistent and streamlined approach to dealing with complaints, which accords with the principle of a unified judiciary, and which will be operated under a single set of statutory rules by an independent body in the form of the JCIO.

20. We recognise the importance of dealing with vulnerable complainants in a sensitive and supportive way. The JCIO deals with over 1,200 complaints a year. It has dealt with over 10,000 complaints since its formation in 2013. It regularly deals with complainants who may require support to use the complaints process. Although it is operationally independent, the JCIO has access to a range of expert advice from the wider Judicial Office and the Ministry of Justice to ensure that it can deal with complainants who have specific needs in an appropriate way.

21. The JCIO's role in relation to complaints about tribunal members will be the same in scope, and will be subject to the same regulation, as it is in relation to other judicial offices, chamber presidents included. Its role is to consider complaints initially to determine whether they fall to be rejected or dismissed and to manage investigations. It has no powers to make findings of misconduct or to take disciplinary action. The power to make findings under the JCIO process rests with nominated judges. There will, therefore, continue to be a significant amount of judicial input into the consideration of complaints about tribunal members. The final decision on the outcome of the small number of cases in which a finding of misconduct is made will continue to be made jointly by the Lord Chief Justice (or the Senior President of Tribunals on his behalf) and the Lord Chancellor.

22. While we agree that, depending on the nature of the allegations, contextual knowledge can be useful when considering a complaint arising in a particular part of the courts and tribunals system, this is not unique to the tribunals. In our response regarding question 12 further below, we confirm that we have decided to adopt the proposal to expand the pool of nominated judges to include, amongst others, salaried tribunal judges. This will help to ensure that the consideration of complaints about tribunal members is informed by relevant knowledge and experience.

The JCIO process

Q4: Do you agree with the introduction of an expedited procedure for lower level cases in which the facts are agreed?

23. In the consultation document we proposed an expedited procedure for dealing with lower level disciplinary cases in which the facts are agreed and the JCIO is satisfied that the Lord Chancellor and Lord Chief Justice would be:
    - very likely to agree that misconduct had occurred and;
    - very unlikely to impose a sanction above a formal warning.

24. An example of the sorts of case that tends to fall into this category is the accumulation of penalty points for speeding offences.

25. A total of 39 respondents answered this question. Of those, 35 agreed with the proposal, citing reasons such as the benefits of streamlining the process and dealing with more straightforward cases swiftly. Four respondents disagreed with the proposal. One of those respondents was sceptical that the proposed procedure would save time. A few objected to it on the basis of an apparent belief that it would involve JCIO civil servants making disciplinary decisions and issuing sanctions.

Our response

26. We agree with the majority of respondents that an expedited procedure will be beneficial. It will enable some of the most straightforward and uncontentious cases to be dealt with in a more streamlined and proportionate way. This will provide swifter outcomes for the individuals concerned and create additional capacity to deal with cases which do require full investigation.

27. A few of the responses from those who disagreed with the proposal suggested a misconception about how the expedited procedure would work. It was not proposed that JCIO civil servants would have the power to make disciplinary decisions or issue sanctions. The JCIO's role would be to administer the procedure. The final decision would be for the Lord Chief Justice and Lord Chancellor.

28. The expedited procedure will also have safeguards including that its use will require the informed consent of the office-holder and he/she would be entitled to opt out of the procedure at any time prior to the case being sent to the Lord Chief Justice and Lord Chancellor for decision.

Q5: Do you agree with a requirement for complaints to be supported by relevant details?

29. In the consultation document we explained that the statutory criteria for a complaint which the JCIO can accept for further consideration include: *'contains an allegation of misconduct on the part of a named or identifiable person holding an office'*.[3] We noted that, despite the guidance on its website, the JCIO frequently receives generalised complaints such as *"the judge was rude to me"*. We said that proper consideration of a complaint is impossible if the complainant does not give details of the alleged misconduct. We therefore proposed that this criterion should be amended to require a complaint to contain *'an allegation of misconduct supported by relevant details.'*

30. A total of 39 respondents answered this question. Of those, 35 agreed with the proposal. Two respondents disagreed with the proposal. Two respondents did not express a clear position on the question.

31. While the majority of respondents agreed that complainants should be required by the rules to provide details of their complaint, a small number of respondents were concerned that the proposed requirement might disadvantage individuals who are less able to articulate their complaint. The importance of clear and comprehensive guidance for complainants about the meaning of 'relevant details' was also emphasised by some respondents.

32. See combined response at question 6.

Q6: Do you agree that the rules should make clear that complaints which do not satisfy the criteria for a valid complaint must be rejected?

33. In the consultation document we explained that 70-80% of all complaints to the JCIO do not meet the statutory criteria for acceptance, for example by failing to give the date of the alleged misconduct. In addition to missing details and generalised complaints, a substantial number of complaints are about judicial decisions and case management and do not raise a question of misconduct. The lack of a clear duty in the rules to reject invalid complaints has led to inconsistent treatment of complaints across the disciplinary system. We therefore proposed that the rules should contain a clear duty to reject complaints which do not meet the statutory criteria for acceptance.

34. A total of 37 respondents answered this question. Of those, 34 agreed with the proposal. Three respondents disagreed with the proposal.

35. While the majority of respondents supported the proposal, citing reasons including bringing clarity to the process for complainants, reducing delay and discouraging

[3] Rule 8, Judicial Conduct (Judicial and other office-holders) Rules 2014

meritless complaints, some respondents (including some of those who supported the proposal) stated that potentially valid complaints should not be rejected without first giving the complainant the opportunity to provide missing details. A few respondents questioned whether the proposals would lead to time savings.

Our response (Questions 5 and 6)

36. We agree with the majority of respondents that these proposals will improve the complaints-handling process. Natural justice and the ability to properly consider a complaint requires that an office-holder who is facing an allegation of misconduct is able to respond in full. This is only possible if the complainant provides the necessary details of his/her allegations. Complainants should have a fair opportunity to do so. However, the process should also enable meritless or generalised complaints, which take up a considerable amount of the JCIO's time, to be disposed of efficiently.

37. Under the current rules, it is not possible for an inadequately particularised complaint to progress to full investigation, and the JCIO cannot accept complaints which do not meet the statutory criteria for acceptance. As such, the purpose of these proposals is primarily to make the existing position clear rather than to introduce new requirements.

38. We agree that it will be important for complainants to have access to clear guidance about the meaning of 'relevant details.' The JCIO will publish guidance alongside the new rules.

39. We also agree that it would be wrong for potentially valid complaints to be rejected because a complainant is less able to articulate their complaint. The JCIO website makes clear that it will consider reasonable adjustments for complainants who need them. It will, for example, consider providing facilities to enable a person who is unable to submit a written complaint to make an audio recording of their complaint, which is then transcribed.

40. As a matter of policy, the JCIO will not reject a potentially acceptable complaint which is missing a required detail, such as the date of the alleged misconduct, without first giving the complainant an opportunity to provide it. There will be no change to this policy. Potentially acceptable complaints which have missing details will only be rejected if the complainant is unable or unwilling to provide them.

41. We consider that these changes, combined with clear guidance for complainants, will support a more consistent and efficient approach to dealing with complaints. This will benefit complainants and office-holders by reducing the amount of time that is spent dealing with complaints which have no prospect of succeeding.

Q7: Do you agree that, subject to the JCIO being able to accept complaints which are about a pattern of behaviour over time and complainants being able to make representations for an extension in exceptional circumstances, the time limit for a complaint to the JCIO should be within three months of the matter complained of?

42. In the consultation document we explained that *'within three months of the latest event or matter complained of'* in the rule which sets the time limit for making a complaint to the JCIO[4] had proved to be problematic in practice. The JCIO occasionally receives complaints containing multiple allegations, sometimes going back years, with substantial gaps between them. If one or more of the allegations is made within the three-month time limit, the JCIO considers itself obliged by the rule to accept the whole complaint for consideration. We therefore proposed that the rule should stipulate that a complaint must be made *'within three months of the matter complained of'*.

43. The consultation document explained that this proposal would not prevent the JCIO from using its discretion to accept a complaint which includes allegations older than three months provided that one or more of the allegations is in time. This could include complaints about a pattern of bullying behaviour over time.

44. A total of 37 respondents answered this question. Of those, 27 agreed with the proposal. Nine respondents disagreed with the proposal. One respondent did not express a clear position on the question.

45. While the majority of respondents supported the proposal, a few argued that complainants should have more than three months to submit a complaint; one respondent, for example, suggested a year. One respondent argued that the proposed change would be a retrograde step in removing the part of the rule which expressly enables the JCIO to accept complaints containing allegations older than three months. Conversely, a few respondents appeared to be under the impression that the proposal sought to introduce a new discretion to accept such complaints. Another stressed the importance of clear criteria for deciding what constitutes a complaint about a pattern of behaviour over time.

Our response

46. We agree with the majority of respondents that the proposed change will be beneficial. We recognise that there will be occasions on which it is proper for the JCIO to accept a complaint, about a pattern of bullying behaviour for example, which contains multiple allegations, some of which are older than three months. Guidance for complainants will make clear that the JCIO is able to use its discretion to accept

[4] Rule 11, Judicial Conduct (Judicial and other office-holders) Rules 2014

complaints about a pattern of behaviour over time, provided that one or more of the allegations is made within the three-month time limit.

47. We agree that clear decision-making criteria will be important for considering whether a complaint is about a pattern of behaviour over time. The JCIO will develop the criteria.

48. Additionally, as now, complaints will not be rejected as out of time without first giving complainants an opportunity to make representations about exceptional reasons to have the time limit extended.

49. Regarding the three-month time limit for making a complaint, we consider that this strikes the right balance of fairness to complainants and the subjects of complaints. We are not persuaded that the time limit should be extended.

Q8: Do you agree with the proposed changes to the criteria for dismissing a complaint?

50. In the consultation document we explained that while the rule setting out the criteria for dismissal of a complaint[5] works well in general, some of the criteria are used rarely, if ever. We therefore proposed simplified criteria, as set out in the table below:

Current	**Proposed**
The Judicial Conduct Investigations Office 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 person holding an office; (d) it is vexatious; (e) it is without substance; (f) even if true, it would not require any disciplinary action to be taken; (g) it is untrue, mistaken or misconceived; (h) it raises a matter which has already been dealt with, whether under these Rules or	The Judicial Conduct Investigations Office must dismiss a complaint, or part of a complaint, if it falls into any of the following categories— (a) it does not adequately detail the matter complained of; (b) the alleged facts are obviously untrue, or the complaint is misconceived; (c) even if the alleged facts were true, they would not require disciplinary action; (d) it relates to a judicial decision or case management, and raises no question of misconduct; (e) it is vexatious;

[5] Rule 21, Judicial Conduct (Judicial and other office-holders) Rules 2014

Current	Proposed
otherwise, and does not present any material new evidence; (i) it is about a person who no longer holds an office; (j) it is about the private life of a person holding an office and could not reasonably be considered to affect their suitability to hold office; (k) it is about the professional conduct in a non-judicial capacity of a person holding an office and could not reasonably be considered to affect their suitability to hold office; (l) for any other reason it does not relate to misconduct by a person holding office.	(f) it relates to the private life or professional conduct in a non-judicial capacity of an office-holder and raises no question of misconduct; (g) it raises a matter which has already been dealt with, whether under these Rules or otherwise, and does not contain any relevant new evidence; (h) for any other reason, it does not relate to misconduct by an office-holder.

51. A total of 37 respondents answered this question. Of those, 36 agreed that the dismissal criteria should be simpler and clearer, the majority also agreeing with the proposed criteria. A small number of respondents suggested revisions to the proposed criteria. One respondent disagreed with the proposal (on the basis that it amounted to semantics).

Our response

52. We agree with the majority of respondents that the amendments proposed in the consultation document meet the aim of providing a clearer, more straightforward set of dismissal criteria. This will support the efficient handling of complaints, promote consistent decision-making and better enable complainants to understand why a complaint has been dismissed.

Q9: Do you agree that the JCIO should be able to invite a complainant to comment on an office-holder's response to their complaint?

53. In the consultation document we proposed that the JCIO should be able to invite a complainant to comment on an office-holder's response to a complaint if that response contains relevant information:
    - of which the complainant may have been unaware; and
    - in respect of which it would assist the JCIO's consideration of the complaint to obtain the complainant's comments.

54. A total of 38 respondents answered this question. Of those, 34 agreed with the proposal. Three respondents disagreed with the proposal. One respondent did not express a clear position on the question.

55. Respondents who agreed with the proposal cited factors such as procedural fairness and that it would assist with the investigation process. Comments from the small number of respondents who disagreed with the proposal tended to focus on the risk of causing undue delay to the process, with one respondent suggesting a strict timescale for the complainant to respond, and the need to avoid enabling complainants to have 'a second bite of the cherry'. A few respondents argued that consent should be sought from the office-holder before a response is disclosed to the complainant. Another argued that only the relevant part of the response should be disclosed.

Our response

56. We agree with the majority of respondents that this proposal will aid the fair and effective consideration of complaints. We agree also that it should not be allowed to cause undue delay. We therefore intend that the rule should include a timescale of ten working days for complainants to provide their comments. We agree that it should not be necessary to disclose the full response to the complainant if it is practicable to extract and disclose the relevant part. While we do not agree that it should be necessary to seek the office-holder's consent to disclose his/her response to the complainant for these purposes, it will be made clear to all office-holders who are asked to respond to a complaint that their response may be disclosed to the complainant.

Q10: Subject to the proposed safeguards, do you agree that the JCIO should have the power to stop dealing with complaints which have no reasonable prospect of resolution before the office-holder leaves office?

57. In the consultation document we noted that, from time to time, the JCIO receives complaints which, for reasons beyond its control, it has no prospect of resolving before an office-holder leaves office. Nevertheless, the JCIO is obliged by the rules to continue dealing with the complaint until the office-holder leaves office. We therefore proposed that the JCIO should have the power to stop dealing with such complaints. Use of the proposed power would be subject to the following safeguards:
    - Mandatory checks to establish whether the office-holder has applied for authorisation to sit in retirement
    - Review and approval by the JCIO head of operations
    - Full written explanation of the decision to the complainant and (if they are aware of the complaint) the office-holder. (Both parties would also be entitled to complain to the independent Judicial Appointments and Conduct Ombudsman if they were unhappy with the JCIO's handling of the complaint.)

58. A total of 32 respondents answered this question. Of those, 17 agreed with the proposal. Twelve respondents disagreed with the proposal. Three respondents did not express a clear position on the question.

59. Reasons cited by respondents who agreed with the proposal included administrative efficiency and avoiding wasteful use of resources. A few respondents who supported the proposal stated that it would be important to have clear decision-making criteria and safeguards to ensure that the power was only used when appropriate. One respondent argued that the decision to stop dealing with a complaint should be made by a senior judge.

60. Points made by those who disagreed with the proposal included:
    - Even with safeguards, the proposed change could undermine public confidence in the disciplinary system
    - The change could encourage office-holders to leave office to avoid facing the consequences of misconduct.

61. The most common point made by respondents who disagreed with the proposal raised a slightly different issue, with several arguing that the disciplinary process should not cease if an office-holder leaves office. One respondent, for example, suggested that public confidence in the disciplinary process would be enhanced by seeing complaints through to a conclusion and publishing a statement about the disciplinary action that would have been taken if the office-holder had remained in office. Another respondent argued that office-holders should not be able to frustrate the disciplinary process by delaying their cooperation until their retirement date.

Our response

62. We agree with the majority of respondents that this change will be beneficial. It is not in the best interests of complainants or office-holders for the JCIO to be compelled to go through the motions of dealing with a complaint which, due to the office-holder's impending retirement, has no prospect of reaching a conclusion. This diverts resource from dealing with other complaints for no benefit. We are not persuaded that this provision will harm public confidence in the disciplinary system. It is likely to be used rarely and only after careful consideration. When it is used, the individuals concerned will receive a full explanation of the decision.

63. In the interests of accountability, in addition to the safeguards referred to earlier, the JCIO will publish data in its annual report about the number of complaints that have not been taken forward for this reason.

64. As noted in the consultation document, this proposal does not apply to the process for considering complaints about magistrates. On retirement, magistrates transfer to the supplemental list. They remain judicial office-holders, albeit with no judicial powers, and can continue to use the suffix 'JP' with their names. Supplemental list magistrates remain within the scope of the disciplinary system.

65. We acknowledge the concerns of those respondents who feel that office-holders should not be able to avoid disciplinary action by leaving office. The current statutory disciplinary regulations enable the Lord Chief Justice and Lord Chancellor to continue to consider a serious case which has progressed to an advanced stage of the investigation process (in which a disciplinary panel or investigating judge proposes to advise, or has advised, that the office-holder should be removed from office) after the office-holder leaves office. If they decide to exercise this discretion and find that misconduct occurred, the JCIO publishes a statement on its website which sets out the disciplinary action that the Lord Chief Justice and Lord Chancellor would have taken if the office-holder had not left office. Implementation of the proposal will have no bearing on this provision.

Q11: Do you agree that nominated judges, investigating judges and disciplinary panels should continue to consider complaints which the JCIO has not rejected or dismissed?

66. In the consultation document we noted that each of these roles has a distinct purpose in the process of considering complaints which the JCIO has not rejected or dismissed:
    - Nominated judges consider complaints to decide whether misconduct has occurred and, if so, recommend a sanction
    - Investigating judges investigate complaints which need more in-depth enquiry to decide whether misconduct has occurred and, if so, recommend a sanction
    - Disciplinary panels review cases in which an office-holder has been recommended for suspension or removal from office before deciding whether misconduct has occurred and, if so, recommend a sanction.

67. A total of 30 respondents answered this question. Of those, 26, agreed with the proposal. Four respondents did not express a clear position on the question.

68. Comments in support of the proposal included reference to the value of the clear separation between the JCIO's role in initially considering complaints and that of nominated judges, investigating judges and disciplinary panels in making findings and recommending sanctions. A few respondents highlighted the importance of those considering complaints having knowledge of the courts and tribunals in which office-holders operate.

Our response

69. We agree with the majority of respondents that nominated judges, investigating judges and disciplinary panels should continue to have a role in the disciplinary system. The clear separation between the JCIO carrying out the preliminary consideration of complaints and then referring cases which raise a question of misconduct to nominated judges works well in practice. It preserves the important

distinction between the administrative functions of civil servants and the role of judges in the process. The use of investigating judges for complex cases and the additional safeguard provided by disciplinary panels in the most serious cases have also proved to be effective. Together these roles enable the Lord Chief Justice and Lord Chancellor to make fully informed decisions about disciplinary cases.

Q12: Do you agree that the pool of nominated judges should be expanded to include Circuit, district and salaried tribunals judges and coroners?

70. In the consultation document we noted that the current cadre of nominated judges is made up of High Court and Court of Appeal judges, whereas the majority of complaints to the JCIO are (due to the much higher number of office-holders and case volumes) about less senior ranks of the judiciary. We proposed expanding the pool of nominated judges to include Circuit, district and salaried tribunals judges and coroners.

71. A total of 29 respondents answered this question. Of those, 28 agreed with the proposal. One respondent disagreed with the proposal.

72. Points made by those who agreed with the proposal included:
    - The work pressures and practices of office-holders of different ranks and jurisdictions can differ markedly
    - Proximity of nominated judges to the work they are considering will increase confidence, particularly amongst the more junior judiciary
    - Fee-paid judges and non-legal members of tribunals should be included in the pool.

73. The respondent who disagreed with the proposal stated that nominated judges should be drawn from senior ranks of the judiciary, who have greater authority.

Our response

74. We agree with the majority of respondents that it will be beneficial to widen the pool of nominated judges to broaden the range of experience of the sorts of environment in which the subjects of complaints operate. While we acknowledge the points made by those who would prefer to see the pool widened further, there is a finite amount of work for nominated judges, and we are not persuaded that it would be beneficial to widen the pool beyond the proposed scope at this stage. However, the position will be kept under review.

Q13: Do you agree that the JCIO should be responsible for deciding whether information received in the absence of a complaint should be investigated?

75. In the consultation document we explained that most of the JCIO's day-to-day work involves dealing with complaints from members of the public, and occasionally other parties such as legal professionals. However, information may also come to light

which raises a question of misconduct from other sources such as press reports. When such a matter arises, the JCIO must send the information to a nominated judge and ask him/her to consider referring it formally to the JCIO for investigation – a somewhat circular process. We therefore proposed that the JCIO should be able to decide whether information received in the absence of a complaint should be investigated.

76. A total of 31 respondents answered this question. Of those, 23 agreed with the proposal. Five respondents disagreed with the proposal. Three respondents did not express a clear position on the question.

77. While the majority of respondents supported the proposal, citing factors such as efficiency and reducing delay, a common theme in the responses of those who disagreed with the proposal was that it would be improper for civil servants to instigate an investigation into an office-holder's conduct. Respondents referred to factors such as judicial independence and constitutional propriety as reasons to leave the decision in the hands of a nominated judge. A few respondents raised concerns about the JCIO fishing for information about office-holders' conduct.

Our response

78. Having reflected carefully on the objections to the proposal, we have decided not to adopt it. While we consider that the JCIO would be able to perform such a function, we are persuaded that judicial confidence in the process will be best served if the decision to initiate an investigation in the absence of a complaint remains in the hands of a nominated judge. The JCIO's role, as now, will be to refer the information it has received to a nominated judge for consideration and make any enquiries necessary to establish the facts before doing so.

79. For the avoidance of doubt, the JCIO's role in this context is not, and will not become, to fish for information. The JCIO only refers information to a nominated judge under this process which it has become aware of in the normal course of its work, or which has been drawn to its attention by a third party, for example following a press report.

Q14: Do you agree that the power to dismiss a complaint which has been referred to a nominated judge should reside solely with the nominated judge?

80. In the consultation document we noted that the working group which developed the current rules considered that, in addition to the power of a nominated judge to dismiss a complaint, a nominated judge should be able to refer a complaint to the Lord Chief Justice and Lord Chancellor for a decision on dismissal, for example if the complaint had attracted significant media attention. This option is set out in the current rules. We said that, having considered views from the JCIO and the nominated judges who work with the rules, we did not consider it to be necessary.

81. A total of 31 respondents answered this question. Of those, 23 agreed with the proposal. Six respondents disagreed with the proposal. Two respondents did not express a clear position on the question.

82. Comments by respondents who agreed with the proposal included that it would be beneficial to simplify the process and reduce delays. Respondents who disagreed with the proposal cited reasons including the need to avoid a public perception that the process is too insular, and the extra level of accountability provided by enabling the Lord Chief Justice and Lord Chancellor to decide to dismiss a complaint.

83. A few respondents suggested that the option to refer a case to the Lord Chief Justice and Lord Chancellor should be preserved for use in exceptional circumstances, for example when a complaint has attracted significant media interest.

Our response

84. We agree with the majority of respondents that two routes to the dismissal of a complaint in this part of the rules are unnecessary and liable to cause inconsistency and confusion. Referral to the Lord Chief Justice and Lord Chancellor for a decision to dismiss a complaint inevitably draws out the process, when in fact nominated judges have the necessary expertise to decide whether complaints should be dismissed.

85. Our decision to adopt this proposal has no bearing on the power of the Lord Chief Justice and Lord Chancellor to decide to dismiss a complaint in which a nominated judge has recommended disciplinary action.

Q15: Do you agree with our proposal for the composition of disciplinary panels?

86. In the consultation document we proposed that disciplinary panels, currently composed of two judicial and two lay members, should in future be composed as follows:
    - for JCIO cases – two lay members and one judge of a senior rank to the subject of the complaint. The judge should chair the panel; and
    - for magistrates – one lay member, one magistrate and one judge of a senior rank to the subject of the complaint. The judge should chair the panel.

87. A total of 38 respondents answered this question. Of those, 27 agreed with the proposal. Nine respondents disagreed with the proposal. Two respondents did not express a clear position on the question.

88. While the majority of respondents supported the proposal, citing reasons including increased public confidence in the process and reduction in delays convening panels, comments by those who disagreed with the proposal included:

- It is wrong in principle for the conduct of a judicial office-holder to be judged by a panel composed of a non-judicial majority
- Judicial confidence in the panels would be eroded
- A panel of two judicial and two lay members is a good balance, and the practical difficulties of convening panels whose judicial members have limited availability could be overcome by holding panel hearings remotely
- An office-holder of equal rank to the subject of the complaint is most likely to have insight of a similar working experience.

89. A small number of those who supported the proposal argued that it should not be a requirement for the judge to chair the panel.

Our response

90. We agree with the majority of respondents that disciplinary panels should be made up as proposed in the consultation document. We consider that an office-holder who is senior to the subject of the complaint alongside two independent lay members will provide a good balance of judicial and lay input. A lay majority will help to demonstrate to the public that the process is independent and fair, and a reduction in the number of panel members will enable panels (which can already take place remotely should the panel wish) to be formed in a timely way.

91. While we acknowledge the concerns of those respondents who referred to issues such as constitutional propriety, we do not believe that this proposal is unconstitutional. The role of disciplinary panels is to make findings and recommendations in cases which have already been considered by a nominated judge, investigating judge or, in the case of magistrates, an advisory committee. Their function is to review findings of fact, recommendations and proposals for disciplinary action which have already been made. As now, each panel will work collaboratively to consider cases and reach an agreed decision. Office-holders will be entitled to make representations to the panel and (if the panel recommends suspension or removal from office) on the panel's draft report. The final decision will be made by the Lord Chief Justice and Lord Chancellor.

Q16: Do you agree that an office-holder whose case is referred to a disciplinary panel should have a right to an oral hearing?

92. The consultation document noted that, under the current rules, a disciplinary panel is required to take oral evidence from the office-holder concerned unless the panel considers it unnecessary. Anecdotal evidence suggests that this has led to some cases in which office-holders wanted to address the panel in person being decided on the papers alone, and inconsistency of approach when deciding whether to take oral evidence. We therefore proposed that office-holders should have a right to an oral hearing before a disciplinary panel.

93. A total of 36 respondents answered this question. Of those, 34 agreed with the proposal. Two respondents disagreed with the proposal.

94. Compliance with natural justice was a common theme of comments by respondents who agreed with the proposal. A few respondents noted that the seriousness of cases considered by disciplinary panels underlined the importance of a right to give oral evidence.

95. One respondent (an experienced panel member) who disagreed with the proposal noted that office-holders have opportunities earlier in the process to provide representations and are also entitled to comment on the panel's report in draft. The respondent stated that panels always consider carefully whether oral evidence is required from the office-holder. The respondent felt that the current approach worked because it gives panels the opportunity to invite the office-holder to give evidence if there is a particular reason to do so. The other respondent who disagreed with the proposal was concerned that the right to an oral hearing could be used to frustrate the process by delayed or non-attendance at the panel's hearing. This concern was also mentioned by a few of the respondents who supported the proposal.

Our response

96. We agree with the majority of respondents that, particularly in light of the seriousness of the cases under consideration, a right to an oral hearing before a disciplinary panel is in the best interests of natural justice. We consider that this will help to give office-holders confidence in the process and support fully informed decision-making.

97. We agree that an office-holder should not be able to use the right to an oral hearing to frustrate the disciplinary process by non-cooperation with attempts to arrange a hearing, or by delayed/non-attendance. In such cases, should they arise, panels will have the discretion to decide cases on the papers.

Q17: Do you agree that office-holders who attend a disciplinary interview or hearing should have a right to be accompanied by a judicial colleague for moral support?

98. In the consultation document we acknowledged that attending a disciplinary interview or hearing can be a stressful experience. We therefore proposed that the rules include a right to be accompanied by a judicial colleague for moral support.

99. A total of 36 respondents answered this question. No respondents disagreed with the right to be accompanied.

100. A small number of respondents questioned why the accompanying person should have to be another office-holder. A few suggested that the accompanying person's role should not be limited to giving moral support. A few also argued that he/she should be able to make representations on the office-holder's behalf in the same way

as a McKenzie Friend may do in a court hearing. One respondent suggested that the accompanying person should be allowed to submit a written statement on behalf of the office-holder.

101. One respondent suggested that the judicial and tribunal associations be asked to nominate a pool of judicial supporters, or office-holders should be entitled to arrange their own professional legal representation.

Our response

102. We agree with the majority of respondents that a right to be accompanied to a disciplinary interview or hearing will be beneficial for office-holders, who may naturally find the experience stressful.

103. While we acknowledge the views of those who felt that the accompanying person should not have to be another office-holder, given the highly sensitive nature of disciplinary proceedings, we are not persuaded that it would be appropriate to widen the scope of this proposal.

104. We consider that the role of the accompanying person should be to give moral support. The disciplinary process is not akin to an adversarial court process. The purpose of a disciplinary interview or hearing is to hear direct from the office-holder. We do not believe that it is necessary or appropriate for an accompanying person to act as an advisor or advocate for the office-holder. Our decision has no bearing on an office-holder's right to instruct (at his/her own expense) legal representation during disciplinary proceedings.

Q18: Do you agree that the requirement to invite representations about how a judicial investigation will be conducted should be deleted from the rules?

105. In the consultation document we explained that investigating judges are required to inform office-holders how they intend to conduct their investigation and invite representations on the proposed approach, which must be received within 10 working days. However, substantive representations are very rare. We therefore proposed that office-holders should simply be informed of the investigating judge's proposed approach.

106. A total of 30 respondents answered this question. Of those, 26 agreed with the proposal. Three respondents disagreed with the proposal. One respondent did not express a clear position on the question.

107. Comments in support of the proposal included reference to streamlining the process and reducing delay. A few respondents commented that for the subject of a complaint to be invited to comment on how the complaint will be investigated undermined the credibility of the process.

108. One respondent who disagreed with the proposal argued that, given the very low number of cases referred to investigating judges, inviting representations on the mode of investigation is not onerous and any saving of resources would be outweighed by the reduction in procedural safeguards.

109. A small number of respondents who supported the proposal did so on the basis that, as indicated in the consultation document, it would still be open to the office-holder to raise objections to the proposed approach. A few suggested that this should be made clear in correspondence with the office-holder.

Our response

110. We agree with the majority of respondents that it should not be a requirement to invite representations on an investigating judge's proposed approach to an investigation. While the number of judicial investigations is small (typically fewer than five a year), they tend to be the longest running cases. We consider that it is not in the best interests of office-holders to retain a procedural step which is largely redundant and draws out the process for no real benefit. We also agree that it could raise questions about the integrity of the process.

111. Adoption of this proposal will not affect an office-holder's right to raise objections to the intended approach should he/she wish to do so. This will be made clear in correspondence with office-holders.

Q19: Do you agree that, except for cases in which suspension or removal from office is recommended, the reports of nominated judges, investigating judges and disciplinary panels should not be sent to office-holders until the end of the disciplinary process?

112. In the consultation document we explained that the rules about sending copies of reports to office-holders are inconsistent and when substantive representations are received on a report, they often simply reiterate representations made earlier in the process. It is very rare that they result in a change to the report itself or the final decision in the case. We therefore proposed that reports should only be sent to office-holders for comment if suspension or removal from office is recommended. In all other cases, the reports should be sent to office-holders (for information) at the end of the process.

113. A total of 35 respondents answered this question. Of those, 23 agreed with the proposal. Twelve respondents disagreed with the proposal.

114. While the majority of respondents agreed that this proposal would reduce delay without undermining the fairness of the process, comments by those who disagreed with it included:

- Sight of the report before it is referred to the Lord Chief Justice and Lord Chancellor is an integral part of the natural justice of the process
- Any saving in time will be outweighed by procedural unfairness
- The current process enables factual inaccuracies to be identified and addressed
- Time savings from adopting the proposal will be negligible.

115. One respondent objected to the proposed safeguard that office-holders would still be entitled to comment on reports in which a recommendation of suspension or removal is made. They argued that it was not appropriate for office-holders to be able to comment on reports of any type as this could undermine public confidence in the process. Another respondent suggested that reports which recommend a sanction below suspension/removal should be sent to office-holders (for information not comment) when they are finalised as this would still provide an opportunity for any factual errors to be pointed out.

Our response

116. We agree with the majority of respondents that this proposal will streamline the process and reduce unnecessary delay.

117. It is, of course, important for office-holders to have the opportunity to respond fully to complaints. There are no circumstances in which a nominated or investigating judge or a disciplinary panel can produce a report without the office-holder first having the opportunity to see the complaint and all of the associated documentation and respond to it. In some cases, the office-holder will have had more than one opportunity to provide representations. Office-holders may also be invited to give oral evidence in some cases.

118. We are, on reflection, persuaded that it would be preferable for reports which recommend a sanction below suspension or removal from office to be sent to office-holders for information as soon as they are finalised, rather than (as proposed in the consultation document) at the end of the process. As originally proposed, office-holders will be invited to comment within a set timescale on reports which contain a recommendation of suspension or removal from office.

Complaints about magistrates

Q20: Do you agree that advisory committees should continue to consider complaints about magistrates under a separate set of rules?

119. In the consultation document we noted that the process for considering complaints about magistrates is set out in the *Judicial Conduct (Magistrates) Rules 2014* (“the magistrates-rules”). Seven regional conduct advisory committees, composed of two-thirds magistrates and one-third lay members, carry out the work of considering complaints. In any case in which an advisory committee finds that misconduct has

occurred the case is referred, via the JCIO, to the Lord Chief Justice (or his senior judicial delegate) and Lord Chancellor for decision. We proposed that advisory committees should continue to be responsible for considering complaints about magistrates under a separate set of rules to those which apply to the JCIO complaints process.

120. A total of 31 respondents answered this question. Of those, 27 agreed with the proposal. Three respondents disagreed with the proposal. One respondent did not express a clear position on the question.

121. A number of respondents who supported the proposal agreed that advisory committees enable people with relevant knowledge and experience to be directly involved in considering complaints. A small number of respondents pointed out that, following reorganisation of the advisory committee system in 2018, the creation of advisory committees to deal specifically with conduct matters has enabled members to build up relevant skills and experience.

122. The three respondents who disagreed with the proposal all argued that magistrates should be treated consistently with other judicial offices, one arguing that this is important for public confidence and magistrates' morale. One respondent, while supporting the proposal, raised concerns about the amount of time advisory committees take to deal with complaints.

Our response

123. We agree with the majority of respondents that the regional conduct advisory committees should continue to consider complaints about magistrates under a separate set of rules.

124. While we acknowledge the concerns of those respondents who felt that complaints about magistrates should be dealt with under the same process as complaints to the JCIO, we do not believe that maintaining the current arrangement lessens the status of magistrates as an integral part of the wider judicial family. We consider that the involvement of advisory committees in this work enables magistrates to have confidence that complaints are considered by those who are best placed to understand their role in the justice system and the nature of their work.

125. As we said in the consultation document, while it would in theory be possible to construct a single set of rules to govern the handling of complaints by advisory committees and the JCIO, they would be complicated and unwieldy. It therefore makes sense to maintain a separate set of rules for complaints about magistrates.

126. Regarding the time taken to deal with complaints about magistrates, several of the proposals referred to below aim to enable complaints to be dealt with in a more proportionate and timely way.

Q21: Do you agree that advisory committee secretaries should have a filtering role which mirrors that of the JCIO?

127. In the consultation document we said that an effective mechanism to filter out complaints which lack merit, and to determine which complaints raise a question of misconduct, is vital. The magistrates-rules do not provide such a mechanism because every complaint received by an advisory committee must be referred to the chair of the committee. We proposed that advisory committee secretaries (legally trained senior HMCTS managers) should perform a filtering role for incoming complaints, analogous to that of the JCIO.

128. A total of 30 respondents answered this question. Of those, 22 agreed with the proposal. Six respondents disagreed with the proposal. Two respondents did not express a clear position on the question.

129. Comments by those who agreed with the proposal cited factors including the benefits of streamlining the process and the fact that secretaries already do much of the work in support of the advisory committee chair and have suitable experience and qualifications.

130. Reasons given by those who disagreed with the proposal included overburdening the secretaries with additional work and, as a matter of principle, such decisions should be made by the committee chair. One respondent suggested that there should be some form of oversight of the secretary in this role, and that, if the proposal is adopted, the assessment of more serious or complicated complaints should remain a role for the committee chair. Another respondent argued for the filtering role to be performed jointly by the secretary and a designated advisory committee member. Another argued that there should be an option to seek a review by the committee chair in exceptional circumstances if the secretary rejects a complaint.

Our response

131. We agree with the majority of respondents that secretaries are well placed to perform a filtering role. Effective triaging of incoming complaints is crucial. The experience of the JCIO has shown that clear delineation between triaging of complaints by officials, with only those which raise a question of misconduct being passed on to those responsible for making findings and recommendations, works well in practice.

132. The advisory committee secretaries have the skills, which will be supplemented by training and guidance, to perform this role effectively. As they already carry out much of the work in the background to enable such decisions to be made, we do not believe that this role will add significantly to their workload.

Q22: Do you agree that conduct panels should be replaced by the new role of nominated committee member, which should have the same powers as that of nominated judge?

133. In the consultation document we explained that, under the magistrates-rules, a three-member conduct panel must be formed to consider any complaint which is not dismissed after initial review, regardless of its seriousness. The proposed nominated committee member (NCM) role would replace conduct panels in a single role, with functions and powers analogous to that of a nominated judge in the JCIO process:

Functions	**Powers**
Consider a complaint and: i. determine the facts ii. determine whether the facts amount to misconduct; and if so: iii. advise [Lord Chancellor & Lord Chief Justice] as to sanction	When considering a complaint: i. make enquiries ii. request documents iii. interview persons Having considered a complaint: i. dismiss complaint ii. deal with complaint informally & direct that it be treated as a pastoral or training matter iii. (if misconduct is found) recommend a sanction

134. A total of 29 respondents answered this question. Of those, 13 agreed with the proposal. Fourteen respondents disagreed with the proposal. Two respondents did not express a clear position on the question.

135. Comments by those who agreed with the proposal included that it would streamline the process for dealing with complaints and is a more proportionate approach, and that it promotes consistency by alignment with the JCIO process.

136. One respondent suggested that, while they supported the proposal in principle, where there is disputed evidence, or the magistrate does not accept the recommendation, or the potential misconduct is very serious, the case should be referred to a three-person panel. Another suggested that magistrates should have a right of appeal from a decision by the NCM to an NCM from a different advisory committee.

137. A common theme of comments by some respondents who disagreed with the proposal was that there is an inherent quality in decision-making by a three-person panel compared to that of a single person (no matter how well qualified, trained or supported that decision-maker might be). Arguments focussed on the way magistrates made judicial decisions, with contributions from different perspectives seen as critical to effective decisions and confidence in the process.

138. Some comments in favour of panel decision-making asserted the value of an independent lay member's contribution. However, others were not in favour of a non-magistrate performing the role of NCM, because they regard direct experience as a magistrate to be essential for those making decisions about the conduct of other magistrates.

139. Some respondents commented on the role of disciplinary panels, suggesting that these could be an appellate body of NCM decisions.

140. Other comments by those who disagreed with the proposal included:
    - The existing system works well with no difficulties in convening a three-person panel (as suggested by the consultation document)
    - Secretaries are not resourced sufficiently to support the NCM
    - The role of non-NCM committee members would be diminished as there would be little interesting work left for them to do.

Our response

141. We recognise that this proposal marks a significant change to the process for considering complaints about magistrates. While we acknowledge, and have considered carefully, the strongly expressed views in favour of retaining conduct panels, we consider that the NCM role will enable complaints to be dealt with in a more proportionate and efficient way, without compromising the quality of decisions.

142. We do not believe that the proposed NCM role is conceptually weaker than decision-making by a three-member panel. The existing process for complaints to the JCIO is for a single nominated judge to make findings of fact and recommend a sanction. While the skills of judges are undoubtedly well suited to this work, the ability to assess evidence objectively, identify key issues, and make findings of fact are not exclusive to the judiciary. We have every confidence that appropriately trained and supported advisory committee members, who are often drawn from senior management backgrounds, can perform the role of NCM to a high standard. (We understand that some conduct advisory committees already use an approach whereby a deputy chair takes a lead role in investigating complaints, with detailed findings being reached prior to handing over to a conduct panel.)

143. In addition to training, NCMs will have access to advice and support from the advisory committee secretary, a fully qualified solicitor/barrister who will be available to advise them on a range of issues including procedure and the principles of natural justice. The secretaries themselves have access to support from the JCIO and, in cases which raise welfare issues, the Judicial HR Welfare and Casework Team.

144. Magistrates who face a recommendation of suspension or removal from office following consideration of a case by the NCM will continue to be entitled to request

that their case is considered by a disciplinary panel. As per our decision in relation to question 15, the panel will be composed of a judge, a magistrate, and an independent lay member.

145. Regarding concerns that members of conduct advisory committees would have insufficient work to do, it is our intention that the committees should be composed entirely of members who have been selected for the role of NCM. This will require the reconstitution of each conduct advisory committee, to be carried out according to a protocol like that used for the reconstitution in 2018. Further information about the timing and reconstitution process will be issued to advisory committees in due course. We do not anticipate that the reconstitution process will commence for at least a year from publication of this report.

Q23: Do you agree that all members and chairs of conduct advisory committees should be eligible to apply for the role of nominated committee member?

146. In the consultation document we noted that conduct panels are composed of both magistrates and non-magistrate (lay) members of advisory committees. We proposed that magistrates, lay members and advisory committee chairs should be eligible to apply for the role of NCM.

147. A total of 27 respondents answered this question. Of those, 19 agreed with the proposal. Five respondents disagreed with the proposal. Three respondents did not express a clear position on the question.

148. A common theme of comments in support of the proposal was that both lay and magistrate members bring value to the process of considering complaints. One respondent commented that restricting the pool could deprive the process of capable individuals. A few respondents stressed the importance of proper training for NCMs.

149. Points made by those who disagreed with the proposal included expressing doubt that magistrates would feel comfortable with non-magistrates making decisions about conduct matters and questioning whether lay members would have sufficient insight about the work of magistrates to perform the role effectively.

Our response

150. We agree with the majority of respondents that all members and chairs of conduct advisory committees should be eligible to apply for the role of NCM. This will ensure that those who perform the role are drawn from a pool that represents the full range of valuable skills and experience on each committee. While we acknowledge that a small number of respondents felt that the role should be restricted to magistrates, we are confident that properly trained and supported lay members will be able to perform this role to the required standard. We are not persuaded that enabling lay members,

who already participate in considering complaints about magistrates, to undertake the role of NCM will undermine magistrates' confidence in the process.

Q24: Do you agree that all candidates for the role of nominated committee member should be selected by a three-person panel composed of the committee secretary, a presiding judge or Family Division liaison judge, and a non-magistrate committee member?

151. In the consultation document we said that, as advisory committee members have already been through a recruitment and selection exercise to be appointed to their committee, selection for the role of NCM should be based on a written expression of interest against a published set of skills/qualities and a role description, which includes the expected level of commitment. We proposed that selection should be by a panel composed in the same way as the panels used when the advisory committee system was reconstituted in 2018:
    - The committee secretary
    - A presiding judge or Family Division liaison judge
    - A lay committee member.[6]

152. A total of 27 respondents answered this question. Of those, 19 agreed with the proposal. Four respondents disagreed with the proposal. Four respondents did not express a clear position on the question.

153. While the majority of respondents agreed with the proposed approach and composition of selection panels, a small number questioned the need for any form of selection process, given that members have already undergone selection to the committee. One respondent argued that this requirement would lead to resignations. A few respondents questioned why magistrate members of advisory committees would be ineligible to sit on the selection panel. Another suggested that future recruitment to conduct advisory committees should require successful applicants to have evidenced an ability to be trained in the role of NCM.

Our response

154. We agree with the majority of respondents that the proposed approach to selection for the role of NCM is appropriate. We consider that the process should be judicially-led and independent so as to ensure public confidence in those performing this important role. We agree that once the role of NCM is implemented, future recruitment to conduct advisory committees should require candidates to have the skills to perform the role.

[6] If all the lay members of a committee wish to apply for the role of NCM, a member from a different committee will be asked to sit on the panel.

Q25: Do you agree that all successful candidates for the role of nominated committee member should be trained for the role, and with our proposals for the development and delivery of the training?

155. In the consultation document we proposed that the JCIO should develop training for NCMs in consultation with HMCTS Heads of Legal Operations (HoLOs) who have overall responsibility for advisory committees. The JCIO would have overall responsibility for the training content. HoLOs would have overall responsibility for its delivery.

156. A total of 27 respondents answered this question. Of those, 26 agreed with the proposal. One respondent disagreed with the proposal.

157. While agreeing with the requirement for training, one respondent suggested that the JCIO should run its own training, questioning whether HoLOs would have time for the work and whether their involvement would raise questions about the independence of the training process. Another respondent stressed the importance of an additional requirement for refresher and continuation training. The respondent who disagreed with the proposal did not give a reason.

Our response

158. We agree with the majority of respondents that training for NCMs should be developed by the JCIO in consultation with HoLOs. As the body which already supports the involvement of nominated judges in the consideration of complaints, the JCIO is well placed to develop training for a role that will have functions and powers analogous to that of a nominated judge. The involvement of HoLOs as the senior officials with responsibility for conduct advisory committees is also necessary. Agreements on delivery of initial and refresher training should be reached by involving the advisory committee deputy secretaries as subject matter experts.

Q26: Do you agree that nominated committee members should not have limited tenure and that their appointment should last until the end of their appointment to the advisory committee?

159. In the consultation document we noted that advisory committee members may serve for a total of nine years. Appointments may be extended in exceptional circumstances, but only for one year. Nominated judges do not have limited tenure. We proposed that NCMs, once appointed, should remain in the role until the end of their nine-year term of appointment to the advisory committee.

160. A total of 28 respondents answered this question. Of those, 19 agreed with the proposal. Eight respondents disagreed with the proposal. One respondent did not express a clear position on the question.

161. Comments by those who supported the proposal included referring to the value of cumulative knowledge and experience, justifying the investment in training, and attracting people to apply for the role. Comments by those who disagreed with the proposal referred to the need to refresh the pool of NCMs and promote diversity. Suggestions for alternative terms of appointment ranged between three and five years.

Our response

162. We agree with the majority of respondents that NCMs should be eligible to serve in the role until their nine-year term of appointment on the advisory committee ends. Given the investment in selection, training and support, we consider that this represents an appropriate maximum term of appointment, particularly bearing in mind the value of accumulated knowledge and experience in this type of role.

Q27: Do you agree that the nominated committee member should carry out his/her duties in consultation with the advisory committee secretary?

163. In the consultation document we noted that advisory committee secretaries already have an important role in the disciplinary system, advising their committees, including conduct panels, on practice, procedure and the rules of natural justice. We proposed that, especially since NCM will be a new role, there should be a formal requirement for the NCM to carry out his/her duties in consultation with the secretary. This would not entail the secretary having a say in the NCM's independent decision.

164. A total of 28 respondents answered this question. Of those, 25 agreed with the proposal. Two respondents disagreed with the proposal. One respondent did not express a clear position on the question.

165. Comments by respondents who supported the proposal included that it reflects the longstanding advisory role of committee secretaries and that NCMs should have this support and guidance to ensure that rules and procedures are followed correctly. One respondent suggested that it would provide a mechanism for sharing good practice and refining training for NCMs. A small number of respondents emphasised the point made in the consultation document that the role of the secretary should not extend to influencing the NCM's decision-making.

166. One respondent who disagreed with the proposal said that it appeared to replicate the differentiation between magistrates and the District Bench, whereby the magistrate must be advised by a lawyer but a district judge is permitted to sit without one. This, they felt, would draw attention to the difference with the system in place for other judicial offices.

Our response

167. We agree with the majority of respondents that the NCM, while an independent decision-maker, should carry out his/her duties in consultation with the secretary. The secretaries already perform a vital advisory function in the process for considering complaints. This is clearly defined, and the secretary is expected to be pro-active in giving advice and guidance. We consider that this function should continue under the revised process, in which adhering to statutory procedures and acting in accordance with natural justice will continue to be fundamental.

Q28: Do you agree that the redundant provisions for full advisory committee consideration of complaints and for committee chairs to decide to deal with a complaint personally should be deleted?

168. In the consultation document we said that we did not consider these provisions to be a necessary or appropriate part of the process. We proposed that they be deleted.

169. A total of 26 respondents answered this question. Of those, 22 agreed with the proposal in full. Two respondents disagreed with deletion of the option for full advisory committee consideration of a complaint. Two respondents did not express a clear position on the question.

170. While the majority of respondents agreed that the provisions are unnecessary and should be deleted, two respondents argued that it would be beneficial to retain the option to refer a particularly complex or unusual complaint to the full advisory committee for consideration.

Our response

171. Comments by a small number of respondents suggested that the second part of the question had been interpreted as a reference to rule 26 of the Judicial Conduct (Magistrates) Rules 2014:

> 24. The Chairman of the Advisory Committee must initially consider whether an allegation of misconduct has been made by a complainant.'

172. The proposal referred in fact to rule 8:

> 8. Notwithstanding any designation under rule 5, the Chairman of an Advisory Committee may decide to deal personally with a specific complaint.

173. We agree with the majority of respondents that these provisions should be deleted. In light of our decision (subject to approval by Parliament) to introduce the role of NCM, and the overarching aims of streamlining and alignment with the JCIO process, we see no reason to retain a provision to refer individual cases to the full committee, or for committee chairs to be able to intervene personally in a complaint. Mechanisms to support NCMs will be available in difficult/complex cases, primarily from the secretary

but also via JCIO and, as appropriate, Judicial Office. We envisage that NCMs will also have forums locally to share best-practice and support one another.

Q29: Do you agree that the proposed expedited procedure should be part of the process for complaints about magistrates, and that the committee secretary should fulfil the same functions in the process as the JCIO?

174. In the consultation document we proposed that an expedited procedure analogous to that proposed for the JCIO process (see question 4) should be part of the process for considering complaints about magistrates. The secretary would fulfil the same functions as the JCIO:
    - identifying suitable cases in which to invite the magistrate to consider consenting to use of the procedure; and
    - agreeing a statement of facts with the magistrate.

175. A total of 30 respondents answered this question. Of those, 27 agreed with the proposal. Three respondents disagreed with the proposal.

176. Comments by those who supported the proposal tended to echo those made in relation to question 4, such as the benefits of streamlining the process and dealing with more straightforward cases expeditiously, while others referred to the value of consistency with the JCIO process.

177. Of the three respondents who disagreed with the proposal, one did not give clear reasons. One respondent argued that if there are to be NCMs, they should investigate all allegations of misconduct. A third respondent argued that all complaints, regardless of seriousness, should be considered by a conduct panel.

Our response

178. For the reasons given in our response to question 4 (and subject to analogous safeguards), we agree with the majority of respondents that the proposed expedited procedure will be beneficial.

Q30: Do you agree that advisory committee secretaries should decide whether information received in the absence of a complaint requires investigation?

179. In the consultation document we proposed that, in line with the thrust of proposals to give secretaries certain functions which mirror those of the JCIO, secretaries should be responsible for deciding whether information received in the absence of a complaint requires investigation.

180. A total of 29 respondents answered this question. Of those, 17 agreed with the proposal. Eleven respondents disagreed with the proposal. One respondent did not express a clear position on the question.

181. While the majority of respondents supported the proposal, a small number felt that this role should remain with the advisory committee chair. Their comments tended to echo those made regarding question 13, that it would be inappropriate for an official to make such a decision. Two respondents raised concerns about additional workload for secretaries. Another argued that allowing an advisory committee to start an investigation without a complaint would confuse accountability and undermine the role of the bench chair. One respondent suggested that the decision should be a role for the NCM.

Our response

182. In line with our decision in relation to question 13, we have decided that the NCM should be responsible for deciding whether information received in the absence of a complaint requires investigation. This is consistent with our decision that in the JCIO process the decision will continue to be made by a nominated judge. As envisaged in our response to question 27, the secretary will have an advisory role, but the decision will be for the NCM to make independently.

183. It should also be noted that, as with the analogous proposal in relation to the JCIO process, this proposal is not seeking to introduce a new power to the rules. Under the current rules, the chair of an advisory committee is required to treat information received in the absence of a complaint which suggests that disciplinary action might be justified as though it were a complaint.[7]

Disciplinary sanctions

Q31: Do you agree that a period of suspension should be generally available as a sanction for misconduct?

184. In the consultation document we explained that, under the current legislation, the Lord Chief Justice, with the Lord Chancellor's agreement, may suspend an office-holder during an investigation which is being carried out under the disciplinary rules and regulations, or during the investigation of an offence. This is referred to as *interim suspension*. It is used on the rare occasions when the Lord Chief Justice and Lord Chancellor agree that it would be improper for an office-holder to continue to carry out judicial duties during an investigation. It is not a disciplinary sanction.

185. The legislation also enables the Lord Chief Justice, again with the Lord Chancellor's agreement, to suspend an office-holder in certain other limited circumstances, for example following conviction for a criminal offence and it has been decided not to remove the individual from office. However, suspension is not otherwise available as a sanction for misconduct. We proposed that it should be.

[7] Rule 143, Judicial Conduct (Magistrates) Rules 2014

186. A total of 39 respondents answered this question. Of those, 34 agreed with the proposal. Five respondents disagreed with the proposal.

187. Comments by respondents who supported the proposal tended to echo those in the consultation document, that it would be useful to have a sanction between reprimand and removal from office as an option for cases which may fall just short of removal. Others noted that suspension as a sanction is a feature in the disciplinary processes of other professions. A small number of respondents who supported the proposal stressed that there should be a limit on the length of suspension that could be imposed, with one respondent suggesting a maximum of 12 months.

188. Comments by those who disagreed with the proposal included a concern for one respondent that it is likely to result in sanctions that would otherwise have been reprimands becoming more serious, and sanctions that would otherwise have been removal from office being reduced to suspension. Another respondent argued that the public may be unlikely to have confidence in an office-holder whose misconduct was serious enough to warrant suspension. Another argued that the sanction would make little difference to magistrates as they are unpaid and sit infrequently. One respondent questioned how the sanction would be applied consistently to salaried and fee-paid judiciary.

189. See combined response at question 33.

Q32: Do you agree that a period of suspension following a criminal conviction, or a finding of misconduct, should be without pay for salaried office-holders?

190. In the consultation document we said that, while it must be right that salary is unaffected in cases of interim suspension during an investigation, under the current legislation a salaried office-holder who is suspended following a criminal conviction would also continue to receive a salary. We proposed that any period of suspension following a criminal conviction should be without pay for salaried office-holders.

191. A total of 39 respondents answered this question. Of those, 34 agreed with the proposal. Four respondents disagreed with the proposal. One respondent did not express a clear position on the question.

192. Comments by respondents who agreed with the proposal included that it would send the wrong message to the public for an office-holder who has been suspended following a criminal conviction to continue to be paid. One respondent commented that it could be seen as rewarding misconduct with a “paid holiday”.

193. A small number of respondents suggested that the appropriateness of suspension without pay may depend on the nature of the criminal offence and that the Lord Chief Justice and Lord Chancellor should have the discretion to suspend an office-holder in these circumstances with or without pay. One respondent argued that the sanction

would be disproportionate, noting that a salaried office-holder cannot undertake any other remunerated work, whereas one who is removed from office can.

194. See combined response at question 33.

Q33: Do you agree that office-holders for whom suspension would have financial consequences should be able to make representations about hardship before a final decision is made?

195. In the consultation document we proposed that salaried office-holders who face a period of suspension should have ten working days to make representations to the Lord Chief Justice and Lord Chancellor if they believe that it would cause them financial hardship.

196. A total of 31 respondents answered this question. Of those, 24 agreed with the proposal. Three respondents disagreed with the proposal. Four respondents did not express a clear position on the question.

197. Comments by respondents who supported the proposal included reference to the importance of fairness and enabling fully informed decisions to be made. One respondent commented that fairness demands a right to make representations about a decision that could affect not only the office-holder, but his/her dependants as well.

198. One respondent suggested that office-holders should have a right to make representations about health issues which may have affected their conduct, and that the period to make representations should be 15 days. Another argued that office-holders should have to produce evidence to substantiate representations as to hardship.

199. A small number of respondents argued that it would not be appropriate under any circumstances for an office-holder suspended for misconduct to continue to be paid, one noting that this is not the practice in other professions. One respondent commented that any financial hardship caused by suspension should be seen as "part of the punishment" for the office-holder's misconduct.

Our response (Questions 31-33)

200. A few respondents to these questions appeared to believe that we were proposing a period of suspension should be available as a sanction for even minor acts of misconduct or conviction for minor offences. We were not. The intention behind the introduction of suspension as a sanction for misconduct is that it would effectively sit between reprimand (the second most serious sanction currently available) and the ultimate sanction of removal from office. Its use would be considered only in the most serious cases which fall just short of warranting removal from office. Similarly, suspension following conviction for a criminal offence (which does not result in

removal from office) would be used only in the circumstances prescribed by the legislation.

201. We agree with the majority of respondents that a period of suspension (without pay for salaried office-holders) should be available to the Lord Chief Justice and Lord Chancellor as a sanction for misconduct. While we expect that this sanction would be used rarely, it will be a valuable option for any case in which, perhaps due to exceptional mitigation for example, removal from office would be too harsh in the circumstances, but a reprimand would be an insufficient response to the misconduct.

202. We are not persuaded that the lack of financial implications for magistrates lessens the validity of this sanction in relation to them. To be suspended from judicial office for misconduct is a very serious matter regardless of whether it has a financial impact on the individual. The same applies to fee-paid office-holders.

203. We agree with the majority of respondents that public confidence in the judiciary would be best served if a salaried office-holder who is suspended following conviction for a criminal offence does not receive payment during his/her suspension.

204. We agree with the majority of respondents that before a period of suspension is imposed on an office-holder for misconduct, he/she should be able to make representations as to any financial hardship that suspension may cause. We also agree with those respondents who argued that the Lord Chief Justice and Lord Chancellor, having considered representations, should have the discretion to adjust the proposed period of suspension, or decide that all or part of the period should be with pay.

Q34: Do you agree with our proposal for renaming the disciplinary sanctions below removal from office?

205. In the consultation document we said that we believe it is important for the link between misconduct and disciplinary sanctions to be clearer, particularly in the case of formal advice, which may not be recognised as a disciplinary sanction. We proposed that the sanctions below removal from office (formal advice, formal warning, reprimand and suspension) should be renamed as follows:
    - Notice of misconduct with formal advice
    - Notice of misconduct with formal warning
    - Notice of misconduct with reprimand
    - Notice of misconduct with period of suspension.

206. A total of 38 respondents answered this question. Of those, 34 agreed with the proposal. Three respondents disagreed with the proposal. One respondent did not express a clear position on the question.

207. Several respondents agreed that the proposal would help to clarify the link between misconduct and the issuing of a disciplinary sanction. A few commented that 'formal advice' without reference to misconduct risked creating the misleading impression that misconduct can be dealt with pastorally, when in fact misconduct always triggers a disciplinary sanction.[8] Similarly, one respondent felt that the distinction between sanctions below suspension is too subtle and that "advice" is not appropriate at all where there is a finding of misconduct.

208. A few respondents argued that clarity and understanding would be aided by including reference in the notice of misconduct to the level of misconduct that had been found to have occurred.

Our response

209. We agree with the majority of respondents that the proposed renaming of disciplinary sanctions will aid clarity and understanding about disciplinary decisions. We consider that public confidence in the disciplinary system is best served by making clear the link between an act of misconduct and the imposition of a disciplinary sanction.

210. As we explained in our response to question 3, we have decided that misconduct should be classified as *misconduct, serious misconduct, gross misconduct*. To further aid clarity and understanding, we have decided that when a disciplinary sanction is issued to an office-holder, the notice of misconduct should refer to the level of misconduct found to have occurred; for example, *Notice of misconduct with formal advice*; *Notice of serious misconduct with reprimand* and so on.

Transparency

Q35: Do you agree that disciplinary statements should contain more detail and that office-holders should be able to comment on the intended wording of the statements?

211. In the consultation document we explained that disciplinary statements, which are published on the JCIO website when an office-holder's actions have been found to amount to misconduct, remain on the website for one year, except for statements about removal from office, which remain for five years. We proposed that disciplinary statements should contain more detail about:
    - The circumstances in which misconduct occurred
    - The details of the misconduct
    - The office-holder's response

[8] Only conduct matters which are not serious enough to amount to a finding of misconduct are dealt with on a pastoral basis by leadership judiciary.

- Any aggravating or mitigating factors (insofar as it is appropriate to make such information public) which the Lord Chief Justice and Lord Chancellor considered when deciding the sanction.

212. We also proposed that office-holders should have the opportunity to comment on (but not approve) the intended wording of statements about them.

213. A total of 42 respondents answered this question. Of those, 40 agreed with the proposal for more detail in disciplinary statements. Six respondents disagreed with the proposal that office-holders should be able to comment on the intended wording of statements. Two respondents did not express a clear position on the question.

214. Several respondents commented that the detail in disciplinary statements is insufficient and that more detail would enhance transparency and public confidence. One respondent felt that the lack of detail can lead to potential complainants believing that there is precedent for their complaints to be upheld, when in fact the circumstances are very different. Another commented that more detailed statements could help prospective complainants understand what sorts of acts may amount to misconduct. One respondent suggested that it would be helpful to refer in the statements to the standards that the office-holder had breached in committing misconduct.

215. Comments by those who supported allowing office-holders to comment on the intended wording of statements included reference to fairness and the ability to correct factual errors prior to publication. One respondent commented that publication of a disciplinary decision can be distressing for the office-holder.

216. Points raised by respondents who disagreed that office-holders should be able to comment on the intended wording of statements included the potential for this to cause delay and that it could be seen to compromise the integrity of the process. One respondent felt that it could give the appearance of “allowing a watering-down of the outcome”.

217. See combined response under question 38.

Q36: Do you agree with our proposed publication periods for disciplinary statements?

218. In the consultation document we proposed the following publication periods for disciplinary statements:
    - Notice of misconduct with formal advice: two years
    - Notice of misconduct with formal warning: four years
    - Notice of misconduct with reprimand: six years
    - Notice of misconduct with period of suspension: eight years

- Removal from office: indefinite (except for failure to meet sitting requirements = five years).

219. A total of 41 respondents answered this question. Of those, 31 agreed with the proposal. Nine respondents disagreed with the proposal. One respondent did not express a clear position on the question.

220. Comments by respondents who supported the proposal tended to echo points made in the consultation document, that publication periods proportionate to the seriousness of the misconduct would enhance transparency and public confidence. A small number of respondents, while supporting the principle behind the proposal, suggested alternative publication periods, for example from two years for formal advice to ten years for removal from office. One respondent commented that with the ability to use search engines, the removal of a statement from the JCIO website might be of little practical benefit regardless of the publication period.

221. Comments by respondents who disagreed with the proposal included:
    - The proposed publication periods are too long. The ability of parties to search a judge's conduct history years after the event would diminish public confidence and tend to give rise to inappropriate recusal applications
    - If disciplinary statements will be available indefinitely on request from the JCIO (see question 37 below), there is no basis for removing them from the website
    - Increased publication periods will not deter misconduct
    - As magistrates are unpaid volunteers, they should not be subject to the same publication periods as salaried and fee-paid office-holders.

222. A small number of respondents argued that all disciplinary statements should be published indefinitely. One commented that deleting them from the JCIO website just makes it harder for journalists and others to check whether an office-holder has been disciplined, offering no protection to the office-holder and increasing the chances of inaccurate reporting.

223. See combined response under question 38.

Q37: Do you agree that deleted disciplinary statements should be available from the JCIO on request?

224. In the consultation document we proposed that it should be open to anyone to request a copy of a deleted disciplinary statement from the JCIO.

225. A total of 40 respondents answered this question. Of those, 28 agreed with the proposal. Five respondents disagreed with the proposal (some on the basis that publication should be indefinite). Seven respondents did not express a clear position on the question.

226. Several of those who supported the proposal referred to increased transparency and accountability. One respondent commented that the proposal would provide further information to potential complainants to consider when deciding whether to complain. Another respondent emphasised the need for a proper process and criteria to govern the requesting and disclosing of statements. One respondent commented that the proposal would better enable an assessment of the performance of the disciplinary system. Another suggested that requesters should be required to provide sufficient reasons for their request, to prevent individuals fishing for information.

227. A common theme of comments by those who did not support the proposal was that if statements are removed from the public domain after a set period, it is contradictory to make them available on request. One respondent asked rhetorically if there was to be no rehabilitation for office-holders who have transgressed. A few respondents repeated their view that the statements should be published indefinitely.

228. See combined response under question 38.

Q38: Do you agree with our proposals for enhancing the JCIO's annual report?

229. In the consultation document we proposed that the JCIO's annual report should be more detailed. We suggested that, along with information about the JCIO's performance, the annual report could usefully include:
    - More information about how the disciplinary system works and how it fits into the constitutional framework, including the role of the Lord Chief Justice (and his senior judicial delegates) and the Lord Chancellor
    - More information about the JCIO, its status, remit and role
    - Information about other roles in the system, i.e. nominated and investigating judges and disciplinary panels
    - Names of the judges and lay disciplinary panel members who have considered cases during the reporting year (JCIO to give individuals prior notice in order that any objections can be raised in advance of publication)
    - Information about the process for considering complaints about magistrates and, if practicable, numbers and types of complaints made to advisory committees
    - A wider range of statistics about complaint types and outcomes
    - More information about the reasons for sanctions given and the nature of the cases in question (using published disciplinary statements as a basis for categorised summaries, but not including office-holders' personal details).

230. A total of 37 respondents answered this question. All 37 agreed with the proposal for additional detail in the annual report, with several commenting on the value of increased transparency and public understanding of the disciplinary system. One respondent did not agree that the names of disciplinary panel members should be published in the annual report, arguing that naming individuals leaves them open to unwarranted attention from people who have been involved in disciplinary cases.

Our response (questions 36-38)

231. We agree with the majority of respondents that the proposed measures will improve transparency and aid public understanding of the disciplinary system. We believe that this will in turn help to maintain public confidence in the system.

232. As we said in the consultation document, as the only published record of the outcome of a disciplinary case in which misconduct has occurred, disciplinary statements are an important source of information for the public and the judiciary. To be of real value, the statements should give a full picture of the circumstances in which misconduct occurred and an understanding of why a particular sanction was given for it. We consider that more detailed statements, combined with publication periods proportionate to the seriousness of the misconduct, will improve public understanding of disciplinary decisions.

233. While we acknowledge the concerns of respondents who felt that the proposed publication periods for disciplinary statements are too long, and on the other hand those who would prefer all statements to be published indefinitely, we consider that the proposed publication periods strike the right balance between transparency and fairness.

234. While only a small number of respondents raised concerns about allowing office-holders to comment on the intended wording of disciplinary statements we are, on reflection, persuaded by the argument that this will add undue delay and, most importantly, could send the wrong message about the integrity of the process. We have therefore decided not to adopt this part of the proposal. Office-holders will, as now, receive advance notice of the wording of statements in the decision-letter, which is sent to them before the statement is published.

235. We are not persuaded that giving individuals the right to request a copy of a deleted statement conflicts with the proposal for finite publication periods (except in cases of removal from office). There is in our view a difference between making information about disciplinary decisions publicly available for a set period of time and allowing individuals, journalists for example, who may have an interest in previously published information about an office-holder's disciplinary record to request a copy of a deleted statement.

236. An enhanced annual report by the JCIO will supplement the other measures referred to above by making more information available to the public about how the disciplinary system operates, along with a range of other useful information. We consider that transparency will be best served if the annual report includes the names of those who perform statutory roles in the system, provided there is (as we intend) a process to enable any concerns to be raised by individuals prior to publication.

Public Hearings

237. In the consultation document we explained that the review working group had considered carefully whether to recommend the use of public hearings in the disciplinary system. In practice, this would mean holding disciplinary panel hearings in public. The working group concluded that, while public hearings could help to promote transparency, the arguments against holding disciplinary panel hearings in public outweighed any potential benefits. Those arguments were:
    - Only a small number of cases reach a disciplinary panel (typically five or so a year). While the panels are an important part of the disciplinary process, they represent only a small part of it
    - Disciplinary panel hearings do not culminate in the panel deciding the outcome of a case. The panels make recommendations to the Lord Chief Justice and Lord Chancellor. Those recommendations are not made at a hearing; they are made later in a written report, which is not published. This sets the panels apart from other regulatory or disciplinary panels and, we believe, means that public hearings would have less value in terms of insight into the decision-making process
    - The personal involvement of the Lord Chief Justice and Lord Chancellor, whose joint decisions are published, provides validation of the process, which we believe carries considerable weight, lessening the need to open the process to the public
    - Public knowledge of an office-holder's involvement in disciplinary proceedings could result in undue damage to his/her reputation, which could have a major and lasting career impact
    - Similarly, it might be difficult for an office-holder to continue to function effectively during a disciplinary case if the public was aware, perhaps as a result of press reporting, of his/her involvement in a serious disciplinary matter. This could lead to an increase in complaints about the individual, requests for recusal and challenges to their decisions
    - The disciplinary rules require that, following a hearing, the panel must produce a report. When the report is finalised, the JCIO prepares advice for the Lord Chancellor and Lord Chief Justice. They then consider the case and reach a joint decision. This process necessarily takes some time. Public hearings could, therefore, lead to unbalanced press reporting, which focusses on the allegations against the office-holder without being able to report on the decision itself
    - Office-holders, particularly in serious cases, may refer in mitigation to sensitive personal issues such as mental health. It would, therefore, be imperative to give office-holders the option to request a private hearing. An unwanted side-effect would be an increase in press interest and speculation about hearings held in private
    - Magistrates are unpaid volunteers, many of whom have careers elsewhere. The prospect of a public hearing in the event of a disciplinary matter arising might deter applications for the role and increase resignations

- Public hearings might also deter office-holders who face suspension or removal from office from requesting a disciplinary panel, for fear of publicity. They might also result in more office-holders wanting to be legally represented at hearings.

238. Although the consultation document did not include a question about public hearings, a small number of respondents commented that public hearings should be a feature of the disciplinary system. Our position remains that, following the working group's careful consideration of this issue, we are not convinced that public hearings would benefit the system.

Diversity

Q39: Do you agree that there should be a fresh recruitment drive for nominated judges, disciplinary panel members and nominated committee members, encouraging applicants from diverse backgrounds?

239. In the consultation document we said that expanding the pool of nominated judges will be an opportunity to increase the diversity of the pool. We also noted that the pool from which judicial members of disciplinary panels are drawn has not been refreshed for some time, and the tenure of lay members was due to expire.[9] We proposed a fresh recruitment drive for nominated judges, disciplinary panel members and the role of nominated committee member. While appointment to these roles would be solely on merit, we proposed encouraging applications from underrepresented groups.

240. A total of 35 respondents answered this question. Of those, 33 agreed with the proposal. One respondent disagreed with the proposal. One respondent did not express a clear position on the question.

241. Comments by those who supported the proposal included that by recruiting from more diverse ranks of the judiciary, the pool of office-holders performing these roles would become more diverse. Several respondents emphasised the importance of promoting diversity and inclusion in the judiciary. One respondent commented that a more diverse pool would help to give office-holders from underrepresented groups confidence in the system. Another commented that this proposal accords with giving office-holders opportunities to broaden their skills and experience.

242. The respondent that did not agree with the proposal (a conduct advisory committee) commented that, while it supported diversity, all current members of an advisory committee should be able to hold the role of nominated committee member.

[9] The tenure of lay members has since been temporarily extended pending the outcome of the consultation.

243. See combined response at question 41.

Q40: Do you agree that a diversity outreach strategy should be developed to encourage more office-holders/lay people from underrepresented groups to undertake roles in the disciplinary process? Please give your reasons.

244. In the consultation document we proposed development of a strategy to promote involvement in disciplinary roles, which could use well-established networks and the expertise of office-holders and others. The details of the strategy would require further thought. However, it might usefully include awareness-raising events and/or sessions as part of established forums, with involvement from office-holders and lay panel members, particularly from underrepresented groups. The judicial associations would also be invited to take part.

245. A total of 33 respondents answered this question. Of those, 32 agreed with the proposal. One respondent disagreed with the proposal.

246. Several respondents commented on the value of increased diversity in promoting public confidence in the disciplinary system. A few respondents, while supporting the proposal, raised concerns about the impact performing these roles would have on office-holders' time and ability to undertake sittings. The respondent who did not agree with the proposal appeared to have misinterpreted it to mean that appointments to the roles in question would not be made on merit alone.

247. See combined response at question 41.

Q41: Do you agree that diversity training for office-holders and lay panel members who undertake roles in the disciplinary process should be mandatory? Please give your reasons.

248. In the consultation document we proposed that those carrying out roles in the disciplinary system should be required to undertake diversity training.

249. A total of 34 respondents answered this question. Of those, 32 agreed with the proposal. Two respondents did not express a clear position on the question.

250. A few respondents pointed out that judicial office-holders already undertake diversity training and commented that any training requirement in relation to disciplinary roles should not replicate training already undertaken.

Our response (questions 39-41)

251. We agree with the majority of respondents that these proposals will be beneficial in promoting diversity amongst those who carry out statutory roles in the disciplinary system.

252. As we noted in the consultation document, much work has been done, and is being done, to promote a more diverse judiciary. Nevertheless, we recognise that office-holders who work in the disciplinary system are drawn from a judiciary which, in some parts more than others, does not reflect the diversity of wider society.

253. We consider that the adoption of these measures along with the proposed widening of the pool of nominated judges will be a solid foundation to improve the diversity profile of those who perform roles in the system. Work to develop the proposed outreach strategy and to identify appropriate training will begin as soon as possible following publication of this report.

254. As also mentioned in the consultation document, the JCIO will work towards collecting diversity data about complainants, office-holders who are subject to disciplinary action, and those who carry out statutory roles in the disciplinary system as soon as practicable.

Impact Assessment, Equalities and Welsh Language

Impact Assessment

255. In the consultation document we explained our assessment that:
    - The proposals will not affect businesses, charities, or the voluntary sector
    - As most of the proposals are for changes to an existing statutory process, we do not expect them to have a significant impact on the public sector
    - A small number of the proposals are expected to result in minor savings.

256. Having considered the consultation responses, this remains our assessment.

Equality Statement

257. The Equality Statement published as part of the consultation document sets out our assessment of the equality impacts of the proposals, which was, in summary:
    - We do not believe that any of the proposals would constitute direct discrimination
    - Regarding indirect discrimination, we do not consider that the proposals are likely to result in any office-holders with protected characteristics suffering a particular disadvantage when compared to someone who does not share the same protected characteristic
    - We do not consider there would be a risk of harassment or victimisation as a result of the proposals. And while we recognise that harassment and victimisation can sometimes occur in any context, there are procedures in place to respond to it
    - We do not consider that the proposals are likely to result in any discrimination against people with disabilities. We recognise that it remains important to continue to make reasonable adjustments for those who participate in the judicial disciplinary system, complainants included
    - Regarding advancing equality of opportunity, we consider that while the impact of the proposals is likely to be largely neutral, proposals aimed at improving the diversity of those who perform roles in the disciplinary system will advance equality of opportunity for under-represented office-holders, particularly in relation to participation in public life
    - Regarding fostering good relations, we do not consider that the proposals will actively foster good relations between those who share a protected characteristic and those who do not. However, we do not believe that the proposals are incompatible with this aim.

258. Having considered the consultation responses, this remains our assessment.

Welsh Language

259. A Welsh translation of the Executive Summary will be published alongside this document.

Conclusion and next steps

260. The responses to this consultation have been immensely helpful in enabling us to reach informed decisions. We believe that, taken together, these changes will improve what is already a well-regarded disciplinary system for the benefit of complainants and the subjects of complaints and public confidence in the judiciary as a whole.

261. Changes to the rules and regulations which govern how complaints are handled will require secondary legislation. The JCIO will now begin the work to produce the new statutory rules and regulations for approval by Parliament. As primary legislation is required for changes to disciplinary sanctions, the Government will legislate to introduce those changes when parliamentary time is available. Those changes which do not require legislation, for example measures to improve transparency, will be introduced as soon as possible. We estimate that it will take 18-24 months for all the changes to be implemented.

262. Keeping key interests, including the judicial associations, informed of progress will be a key part of the implementation plan for this work. Those whose work will be directly affected by the changes will be consulted as part of the implementation planning process.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

Annex A: List of Respondents

The Association of Her Majesty's District Judges

Her Majesty's Council of Circuit Judges

Association of High Court Masters

The High Court Judges' Association

The Coroners' Society of England and Wales

The United Kingdom Association of Fee-paid Judges

Council of Appeal Tribunal Judges

The Forum of Tribunal Organisations

Chamber President and Leadership Judges of the Social Entitlement Chamber

First-tier Tribunal (Property Chamber)

General Council of the Bar

The Law Society

Transparency Project

Senators of the College of Justice

Judicial Research Project

Judicial Support Network

Rights of Women

Office of the Judicial Appointments and Conduct Ombudsman

The Magistrates' Association

The Magistrates' Leadership Executive

North West Conduct Advisory Committee

North East Conduct Advisory Committee

Midlands Conduct Advisory Committee

London Conduct Advisory Committee

South West Conduct Advisory Committee

South East Conduct Advisory Committee

Secretaries of the seven regional conduct advisory committees

West London Magistrates Bench

Mrs Justice Cheema-Grubb DBE

Senior District Judge Paul Goldspring

Lord Justice Peter Jackson

District Judge Steven Rogers

Judge Laurence Saffer

Mr Justice Williams

Benjamyn H Damazer JP DL

Jacqueline Devonish

Stephan Hays JP

Geoff Homer JP

David James JP

Dr Susan Jordache JP

Simon Massarella JP

Lesley Pickup JP

Duncan Webster, OBE. JP

Mark Adamson

Sally Bateman

Terence Ewing

Dominic Ireland

Gabriel Kanter-Webber

Ivan Murray-Smith

Dr Patrick O'Brien

Ursula Riniker

John Rowlands

Joshua Rozenberg

Jordan Tutton

Dr Suzy Walton

Mike Woodhouse JP

Peter Wrench

Alternative format versions of this report are available on request from: disciplinary.consultation@judicialconduct.gov.uk