

## **Judicial Council Act 2019**

### **Judicial Conduct Committee**

#### **Complaints Procedure**

#### **1.0 Introduction**

- 1.1 The Judicial Council Act 2019 (“the 2019 Act”)<sup>1</sup> obliges the Judicial Conduct Committee to specify procedures relating to the making and investigation of complaints, the investigation of judicial misconduct in the absence of or following the withdrawal of a complaint, and the making of determinations. In devising these procedures, the Judicial Conduct Committee must have regard to the need for it to perform its functions in an effective manner and in accordance with fair procedures and the law.
- 1.2 The objective of these procedures is to provide for the fair, reasonable and expeditious investigation and determination of admissible complaints and, where appropriate, to provide for fair and proportionate resolutions. The procedures, amongst other things, make provision for the:
- (a) making of complaints;
  - (b) determination of the admissibility of complaints;
  - (c) resolution of complaints by informal means;
  - (d) investigation of complaints by a Panel of Inquiry;
  - (e) making of a determination by the Judicial Conduct Committee;
  - (f) steps and processes to be followed by the Judicial Conduct Committee and a Panel of Inquiry;
  - (g) referral by the Judicial Conduct Committee to the Minister with regard to Article 35.4 of the Constitution of Ireland, and
  - (h) specification of time periods within which things are required to be done.
- 1.3 While the procedures are based in law, every effort has been made to set them out in a manner that will be understood by laypersons as well as lawyers and judges.
- 1.4 The Registrar, who acts as secretary to the Judicial Conduct Committee, shall, at all times throughout the complaints procedure, remain independent in the performance of their function.
- 1.5 In all instances where a person is required under these procedures to notify somebody of anything, such notification must be in writing and as soon as practicable.
- 1.6 In the event of a conflict between the procedures set out herein and the 2019 Act, the latter shall prevail.

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<sup>1</sup> Section 52 Judicial Council Act 2019

## **2.0 Making a complaint**

- 2.1 A complaint may be made, in the prescribed form (See Appendix 1 (*not yet finalised*)), by any person who is directly affected by, or who witnessed, conduct that could, if substantiated, constitute judicial misconduct.
- 2.2 A complaint may be made on behalf of a child by their parent or guardian, and on behalf of an incapacitated person by a person duly authorised by law to act on their behalf.
- 2.3 A complaint may be made on behalf of a solicitor who is a member of the Law Society of Ireland or a barrister who is a member of the General Council of the Bar of Ireland by an authorised officer of their respective representative body.

## **3.0 Time limit for making a complaint**

- 3.1 A complaint shall be made within **three months** of the date of the occurrence giving rise to the complaint.
- 3.2 This time limit may be extended if, and only if, the Judicial Conduct Committee determines that it is just and equitable to do so having regard to the nature of the complaint and any other relevant circumstances.
- 3.3 A determination as to whether to extend time for the making of a complaint, the reasons therefor, and whether the complaint is thereby admissible, will be notified by the Registrar to the complainant and the judge.
- 3.4 This complaints procedure shall not apply, or shall cease to apply, as the case may be, to a complaint concerning a judge who, at the time of the making or after the making of a complaint, ceases to be a judge.

## **4.0 Notification of the making of a complaint**

- 4.1 After receipt of a complaint, the Registrar will notify the judge concerned of the complaint, the particulars thereof, and the name of the complainant.
- 4.2 The Registrar may request the complainant or the person acting on their behalf, or the judge concerned, to provide any additional information concerning the complaint which the Registrar may reasonably request for the purpose of their determination on the admissibility of the complaint.

## **5.0 Notification following determination of admissibility**

- 5.1 On determining that some or all of the complaint is admissible and will be referred to the Judicial Conduct Committee, the Registrar will notify the complainant and the judge accordingly.

## **6.0 Admissible complaints**

6.1 A complaint will be admissible if:

- i. it is made by a person authorised per paragraph 2 above,
- ii. the conduct complained of, if substantiated, could constitute judicial misconduct. Judicial misconduct means conduct (whether an act or omission) by a judge, whether in the execution of his or her office or otherwise, and whether generally or on a particular occasion, that
  - (a) constitutes a departure from acknowledged standards of judicial conduct, such standards to have regard to the principles of judicial conduct referred to in the 2019 Act, and
  - (b) brings the administration of justice into disrepute,
- iii. the complaint is made within the three month time limit specified in paragraph 3 above or such extension as may be specified by the Judicial Conduct Committee,
- iv. the complaint is not frivolous or vexatious, and
- v. the complaint is made in compliance with these procedures

6.2 A complaint will be inadmissible if it relates solely to:

- i. conduct by the judge concerned in proceedings before them in respect of which a remedy is provided, or may be provided, if pursued by the complainant either within the proceedings, on any appeal, by judicial review, or in any other proceedings or
- ii. the merits of a decision in proceedings before the judge.

## **7.0 Notification following determination of inadmissibility**

7.1 On determining that the some or all of the complaint is inadmissible, the Registrar must notify the complainant and the judge of

- (a) the determination,
- (b) the reasons for the determination, and
- (c) the complainant's entitlement to seek a review of the determination.

## **8.0 Review of determination of inadmissibility by Registrar**

8.1 Within **30 days** of receiving notification of the Registrar's determination of inadmissibility of a complaint, the complainant may, in writing, seek a review of that determination.

- 8.2 If the Registrar receives such a request, they must refer the complaint to the Complaints Review Committee and notify the complainant and the judge accordingly. The Registrar shall furnish to the Complaints Review Committee all material in their possession regarding the complaint.
- 8.3 The Complaints Review Committee may request the complainant or the person acting on their behalf, or the judge concerned, to provide any additional information concerning the complaint which the Complaints Review Committee may reasonably request for the purpose of their determination on the admissibility of the complaint.
- 8.4 The Complaints Review Committee will determine whether some or all of the complaint is admissible having regard to the matters set out at paragraph 6 above.
- 8.5 Where the Complaints Review Committee is satisfied that some or all of the complaint would be admissible but for being out of time, the Complaints Review Committee must refer it to the Judicial Conduct Committee for its determination as to whether the deadline should be extended.
- 8.6 The Registrar must notify the complainant and the judge of the determination of the Complaints Review Committee regarding the admissibility of some or all of the complaint and the reasons for such determination.

#### **9.0 Withdrawal of complaint under consideration by Registrar or Complaints Review Committee**

- 9.1 Where a complaint is withdrawn while being considered by the Registrar or the Complaints Review Committee, they may decide that no further action should be taken, or they may refer the matter to the Judicial Conduct Committee for its decision on whether or not to initiate an investigation of the conduct notwithstanding the withdrawal of the complaint.
- 9.2 After the making of a decision or a referral by the Registrar or the Complaints Review Committee, the Registrar must notify the complainant and the judge concerned.

#### **10.0 If the judge consents to a reprimand by the Judicial Conduct Committee before the complaint is investigated**

- 10.1 The judge concerned may, at any time after a complaint is determined to be admissible and before a Panel of Inquiry is appointed to investigate the complaint, inform, in writing, the Judicial Conduct Committee that they consent to the issuing of a reprimand in relation to the complaint.
- 10.2 On being informed of such consent, the Judicial Conduct Committee must consider the nature, gravity and circumstances of the complaint and, if satisfied

that it is appropriate to do so having regard to the interests of the administration of justice, issue a reprimand.

- 10.3 The reprimand may provide for one or more of the following:
- (a) issuing advice to the judge;
  - (b) recommend to the judge a course of action to be pursued by the judge; and/or
  - (c) issuing an admonishment to the judge.
- 10.4 After the Judicial Conduct Committee issues a reprimand, the Registrar must notify the complainant.

#### **11.0 Investigations of judicial misconduct in absence of, or after withdrawal of, a complaint**

- 11.1 In the absence of a complaint or where a complaint is withdrawn, the Judicial Conduct Committee may refer any matter relating to the conduct of a judge to a Panel of Inquiry for investigation if it is satisfied that there is *prima facie* evidence of judicial misconduct and it considers it necessary to do so for the purposes of safeguarding the administration of justice.
- 11.2 Where the Judicial Conduct Committee decides not to refer the matter for investigation, no further action shall be taken. The Registrar must notify the complainant and the judge of that decision.
- 11.3 Where the Judicial Conduct Committee decides to refer the matter for investigation, the Registrar must notify the complainant and the judge of that decision. The Registrar must also provide the judge with written particulars of the alleged judicial misconduct.

#### **12.0 Referral of complaint for resolution by informal means or investigation**

- 12.1 Whenever a complaint is determined to be admissible, the Judicial Conduct Committee must either refer the complaint for resolution by informal means if it is satisfied that it is appropriate to do so, or refer the complaint to a Panel of Inquiry for investigation.
- 12.2 Where the Judicial Conduct Committee decides to refer a complaint for resolution by informal means, it must request, in writing, a designated judge(s) to undertake the resolution of the complaint by informal means.
- 12.3 On receipt of such request, the designated judge(s) may appoint not more than 3 judges of the court of which the judge concerned is a judge to undertake the resolution by informal means on behalf of that designated judge(s). The appointed judge(s) must undertake the informal resolution.

- 12.4 Where a complaint relates to conduct in relation to proceedings that have not been finally determined, the Judicial Conduct Committee may, where it considers it appropriate to do so, adjourn any investigation pending the final determination of the proceedings.
- 12.5 After the Judicial Conduct Committee performs any function under paragraph 12, the Registrar must notify the complainant and the judge concerned.

### **13.0 Resolution of complaints by informal means**

- 13.1 No attempt shall be made to resolve a complaint by informal means without the consent of the complainant and the judge concerned.
- 13.2 A consent given by the judge for informal resolution of a complaint will not be taken as an admission of any allegation made in that complaint against that judge.
- 13.3 An answer given, or a statement made, by the complainant or the judge concerned in the course of attempting an informal resolution must not be communicated to any person other than those participating in the attempted resolution, or be admissible in any disciplinary, civil, or criminal proceedings.
- 13.4 Informal resolution shall not include payment of financial compensation.
- 13.5 The designated judge(s) may, at their discretion, use such procedures as they consider appropriate to resolve the complaint.
- 13.6 If a designated judge(s) or appointed judge(s), as the case may be, are of the opinion that a complaint is not suitable for informal resolution, they must submit a written report to the Judicial Conduct Committee setting out the reasons for that opinion. On receipt of such report, the Judicial Conduct Committee must consider the report and *must* refer the complaint to a Panel of Inquiry for investigation.
- 13.7 Where the designated or appointed judge(s) are satisfied that the complaint has been resolved by informal means, they must prepare and submit a written report to the Judicial Conduct Committee setting out the particulars of the resolution of the complaint. In that event, the Judicial Conduct Committee must take note of the report and take no further action. The Registrar must notify the complainant and the judge that in light of the resolution no further action will be taken.
- 13.8 If a designated judge(s) or appointed judge(s) are of the opinion that a complaint has not been resolved by informal means, they must submit a written report to the Judicial Conduct Committee setting out the particulars of the complaint and the reasons why, in their opinion, the complaint was not resolved by informal means. On receipt of such report, the Judicial Conduct Committee must consider the report and *may*, where it considers it appropriate, refer the complaint to a Panel of Inquiry for investigation.

#### **14.0 Conduct of investigation by a Panel of Inquiry**

- 14.1 The Panel of Inquiry must investigate complaints referred to it by the Judicial Conduct Committee under paragraph 12 and 13 above, and may seek such information or documents relating to the complaint as it considers appropriate.
- 14.2 The Panel of Inquiry may conduct a hearing in connection with its investigation of a complaint.
- 14.3 Any such hearing will be in public unless the Judicial Conduct Committee directs that in order to safeguard the administration of justice the hearing should be conducted in whole or in part in private.
- 14.4 The Panel of Inquiry shall have a registrar who must not be the Registrar to the Judicial Conduct Committee. The registrar to the Panel of Inquiry must notify the complainant and the judge concerned of
  - (a) the time, date and place of the hearing,
  - (b) the particulars of the complaint,
  - (c) the allegation(s) arising therefrom,
  - (d) the evidence to be adduced in support of the allegation(s), in sufficient time to prepare for the hearing and
  - (e) their entitlement to request that some or all of the hearing be conducted otherwise than in public.
- 14.5 The Panel of Inquiry shall not accede to a request per paragraph 14.4 (e) above in the absence of reasonable and sufficient cause.
- 14.6 At the hearing the registrar to the Panel of Inquiry will present particulars of the complaint and the allegation(s) arising therefrom. The testimony of witnesses attending shall be given on oath or affirmation, and there shall be a right to cross-examine witnesses and call evidence in defence and reply.
- 14.7 The Panel of Inquiry is under a duty to disclose to a person who is directed or volunteers to attend as a witness before it, or a person about whom evidence is given to the Panel of Inquiry, the substance of any evidence in the possession of the Panel of Inquiry that in its opinion the person should be aware of for the purposes of the evidence that the witness or person may give. There is no obligation to disclose the source of any evidence given or document produced by a witness while giving evidence in private, unless the Panel of Inquiry considers that, in view of the purposes of the investigation or in the interests of fair procedures, the source should be disclosed. A Panel of Inquiry must give a person to whom it discloses the substance of evidence an opportunity to comment by written or oral submissions on that evidence.

#### **15.0 Powers of the Panel of Inquiry**

- 15.1 For the purpose of the investigation of referred complaints a Panel of Inquiry shall have all the powers, rights and privileges that are vested in the High Court

relating to enforcing attendance, examining witnesses, and compelling the production of records, including a record of proceedings in court or a transcript thereof.

- 15.2 A Panel of Inquiry may receive evidence orally, by affidavit, by live video link, video recording, audio recording or otherwise.

#### **16.0 Failure or refusal by the complainant to cooperate with the Panel of Inquiry**

- 16.1 If a complainant fails or refuses to make reasonable efforts to cooperate with an investigation, the Panel of Inquiry will prepare and submit a report concerning same to the Judicial Conduct Committee and may suspend its investigation pending directions from the Judicial Conduct Committee.
- 16.2 After receiving such report, the Judicial Conduct Committee may direct the Panel of Inquiry to proceed with or discontinue the investigation.
- 16.3 If the Judicial Conduct Committee directs the Panel of Inquiry to discontinue the investigation the complaint shall be deemed to have been withdrawn by the complainant and no further action will be taken, and the Registrar must notify the complainant and the judge.

#### **17.0 Failure or refusal by the judge to cooperate with the Panel of Inquiry**

- 17.1 Where the judge concerned fails or refuses without reasonable cause to cooperate with an investigation, the Panel of Inquiry may, if it considers it appropriate in all the circumstances, decide to discontinue the investigation.
- 17.2 In that event, the Panel of Inquiry will prepare and submit a written report to the Judicial Conduct Committee setting out the circumstances of the failure or refusal and *shall* recommend the issuing of a reprimand in respect of the failure or refusal and *may* make such recommendations as the Panel of Inquiry considers necessary for the purpose of safeguarding the administration of justice.
- 17.3 The mandatory recommendation to issue a reprimand *must* provide for one or more of the following:
- (a) issuing advice to the judge;
  - (b) recommend to the judge a course of action to be pursued by the judge;
  - and/or
  - (c) issuing an admonishment to the judge.
- 17.4 The discretionary recommendation considered by the Panel of Inquiry to be necessary for the purpose of safeguarding the administration of justice *may* include a recommendation that changes be made to court procedures, practice directions, distribution of work and/or may also concern related matters.



- 17.5 The Judicial Conduct Committee will consider the report received from the Panel of Inquiry and will make such determination in relation to the investigation of the complaint as it considers appropriate and, in doing so, may accept, with or without modification, or reject any recommendations contained in that report.
- 17.6 After the Judicial Conduct Committee makes a determination, the Registrar must notify the complainant and the judge of the determination of the Judicial Conduct Committee and the reasons therefor.

## **18.0 Matter before a Panel of Inquiry concerning health of judge**

- 18.1 Where during the course of an investigation, the Panel of Inquiry forms the view that the conduct that is the subject of the complaint may be related to the physical or mental health of the judge concerned, the Panel of Inquiry shall, having given the judge an opportunity to address the matter, submit a written report to the Judicial Conduct Committee stating that view and the reasons therefor.
- 18.2 Where the judge informs the Panel of Inquiry that they have taken, or are taking, steps to address the matter related to their health, the Panel of Inquiry must specify those steps in its report. Thereafter the investigation of the complaint concerned shall be discontinued and the Registrar shall notify the complainant and the judge.
- 18.3 Where the judge does not inform the Panel of Inquiry that they have taken, or are taking, steps to address the matter related to their health, the Panel of Inquiry will adjourn the investigation of the complaint and submit a report to the Judicial Conduct Committee. The registrar to the Panel of Inquiry will notify the complainant and the judge of the adjournment.
- 18.4 On receiving such report, the Judicial Conduct Committee will, as soon as practicable, submit the report to the Chief Justice or relevant President of a court in accordance with the 2019 Act. On receipt of the report, the Chief Justice or relevant President may
- (a) recommend to the judge concerned that
    - (i) they seek medical or other specified assistance, or
    - (ii) take such other steps as the judge(s) who received the report consider appropriate, and
  - (b) submit a report to the Judicial Conduct Committee in relation to the making of the said recommendation.
- 18.5 If a judge to whom such a recommendation is made complies with the recommendation, the investigation of the complaint concerned will be discontinued and the Registrar will notify the complainant and the judge.
- 18.6 If a judge to whom such a recommendation is made does not comply with the recommendation, the judge(s) who made the recommendation must submit a report to the Judicial Conduct Committee in relation to that non-compliance.

On receipt thereof, the Judicial Conduct Committee may direct the Panel of Inquiry to continue the investigation of the complaint concerned. Where the Judicial Conduct Committee gives such a direction, the Registrar will notify the complainant and the judge.

**19.0 Consent to reprimand by Judicial Conduct Committee before conclusion of investigation**

19.1 Where before or during an investigation by a Panel of Inquiry, the judge concerned informs the Panel of Inquiry that they consent to the issuing of a reprimand, the Panel of Inquiry may, if it considers it appropriate having regard to the nature, gravity and circumstances of the complaint and the need to safeguard the administration of justice, adjourn the investigation of the complaint and submit a report to the Judicial Conduct Committee in relation to the complaint.

**20.0 Withdrawal of complaint while it is being investigated by the Panel of Inquiry**

- 20.1 Where a complaint is withdrawn during the course of an investigation the Panel of Inquiry may, with the consent of the Judicial Conduct Committee, decide that no further action should be taken in relation to the complaint, or decide to proceed with the investigation as if the complaint had not been withdrawn. In the event of the latter, the Panel of Inquiry shall continue with the investigation as if that complaint had not been withdrawn.
- 20.2 The Registrar will notify the complainant and the judge concerned of every step in the process and every decision made by the Judicial Conduct Committee or the Panel of Inquiry.

**21.0 Adjournment of investigation of complaint by the Panel of Inquiry**

- 21.1 A Panel of Inquiry may adjourn an investigation of a complaint at any time during the course of the investigation if it appears to the Panel of Inquiry to be appropriate to so do. It may subsequently resume the investigation at any time or submit an interim report to the Judicial Conduct Committee specifying the reasons for the adjournment of the investigation.
- 21.2 As soon as practicable after receiving an interim report, the Judicial Conduct Committee must consider it and give a direction in writing to the Panel of Inquiry requiring it to either resume or discontinue the investigation.
- 21.3 Where the investigation is discontinued the Registrar will notify the judge concerned and the complainant of the direction and the reasons therefor.

## **22.0 Report of Panel of Inquiry submitted to Judicial Conduct Committee**

- 22.1 On completing an investigation, the Panel of Inquiry must submit a written report to the Judicial Conduct Committee. The report must specify the particulars of the complaint, the evidence (if any) presented to the Panel of Inquiry, and the Panel of Inquiry's findings in relation to the complaint.
- 22.2 Where a Panel of Inquiry finds that an allegation in a complaint has been proved, the report must include the reasons for that finding, such recommendations as the Panel of Inquiry considers appropriate for reprimanding the judge concerned, and such recommendations (if any) as the Panel of Inquiry considers necessary for the purposes of safeguarding the administration of justice.
- 22.3 The recommendation to issue a reprimand *must* provide for one or more of the following:
- (a) issuing advice to the judge;
  - (b) recommend to the judge a course of action to be pursued by them; and/or
  - (c) issuing an admonishment to the judge.
- 22.4 Any recommendation considered by the Panel of Inquiry to be necessary for the purpose of safeguarding the administration of justice may be made to the Chief Justice or the relevant President of a court, or may recommend changes be made to court procedures, practice directions, distribution of work and/or may also concern related matters.
- 22.5 Where a Panel of Inquiry finds that an allegation in a complaint has not been proved, the report must include the reasons for that finding.

## **23.0 Draft report and amendments thereto**

- 23.1 Before the Panel of Inquiry submits an interim or final report to the Judicial Conduct Committee in relation to an investigation, the registrar to a Panel of Inquiry must send a draft of the report to the complainant and the judge. The draft must be accompanied by a notice from the Panel of Inquiry specifying the period within which submissions or requests may be made to the Panel of Inquiry.
- 23.2 A complainant or judge who believes that the Panel of Inquiry has not observed fair procedures in relation to them may, within the specified time limit, submit to the registrar to the Panel of Inquiry a statement in writing setting out the reasons for their belief and a request to the Panel of Inquiry to review the draft report having regard to the statement.
- 23.3 Where a Panel of Inquiry does not receive a statement within the time limit, it must, as soon as practicable, submit its report to the Judicial Conduct Committee.

- 23.4 Where a Panel of Inquiry receives a statement, it may, after considering it and reviewing the draft report either amend the draft report to take account of the statement or decline to make any amendments. Any statement received will be attached to the report submitted to the Judicial Conduct Committee.
- 23.5 If a draft report is not amended, or is only partially amended, to take account of a statement, the reasons for that shall be included in the report.

#### **24.0 Determination of complaint by Judicial Conduct Committee**

- 24.1 As soon as practicable after receiving a report from a Panel of Inquiry, the Judicial Conduct Committee will notify the complainant and the judge in that they may make submissions, in writing or orally, to the Judicial Conduct Committee within such period as is specified in the notification in relation to the recommendations that may be included in the report.
- 24.2 As soon as practicable after the expiration of the period specified in a notification, the Judicial Conduct Committee will consider the report received from the Panel of Inquiry, and any submissions made by the complainant or the judge and make such determination of the complaint as it considers appropriate, including whether or not it has been substantiated.
- 24.3 For the purposes of assisting in making a decision or observing fair procedures, the Judicial Conduct Committee may conduct a hearing in relation to a complaint that has been the subject of an investigation if, having regard to all the circumstances, it considers it appropriate to do so.
- 24.4 The Registrar must notify the complainant and the judge concerned of
- (a) the time, date and place of the hearing,
  - (b) the particulars of the complaint,
  - (c) the allegation(s) arising therefrom, and
  - (d) the evidence to be adduced in support of the allegation(s), in sufficient time to prepare for the hearing.
- 24.5 Any such hearing will be in public unless the Judicial Conduct Committee directs that in order to safeguard the administration of justice some or all of the hearing should be conducted in private.
- 24.6 At the hearing the Registrar will present particulars of the complaint and the allegation(s) arising therefrom. The testimony of witnesses attending must be given on oath or affirmation, and there will be a right to cross-examine witnesses and call evidence in defence and reply.
- 24.7 For the purpose of the hearing the powers of the Judicial Conduct Committee shall be the same as those vested in the Panel of Inquiry for the purpose of investigating referred complaints. Similarly, the Judicial Conduct Committee may receive evidence orally, by affidavit, by live video link, video recording, audio recording, or otherwise.

- 24.8 A determination by the Judicial Conduct Committee as to whether the complaint has been substantiated must be in writing and must give the reasons for the determination and may include a recommendation for the issuing of advice to the judge, the making of a recommendation that the judge pursue a specified course of action, and/or the issuing of an admonishment to the judge.
- 24.9 It may also include such recommendation, to the Chief Justice or the President of the relevant court as the case may be, as the Judicial Conduct Committee considers necessary for the purpose of safeguarding the administration of justice, or any recommendation that changes be made to court procedures, practice directions, distribution of work and/or may also concern related matters.
- 24.10 In considering the report of a Panel of Inquiry and issuing a determination, the Judicial Conduct Committee may accept, with or without modification, or reject any recommendation contained in the report submitted by the Panel of Inquiry.
- 24.11 Where a determination made by the Judicial Conduct Committee requires no action to be taken by the judge concerned or is to the effect that the complaint has not been substantiated, the determination must specify that the investigation of the complaint is concluded.
- 24.12 Where a determination made by the Judicial Conduct Committee requires the judge concerned to take any action, the Judicial Conduct Committee may require the judge concerned to report to the Judicial Conduct Committee in the manner specified by the Judicial Conduct Committee regarding compliance with the requirement and may adjourn the matter for such period as the Judicial Conduct Committee considers appropriate and at the end of that period ascertain whether or not the determination has been complied with by the judge concerned.
- 24.13 The Registrar will notify the complainant and the judge of the determination of the Judicial Conduct Committee, the reasons therefor and, where a matter has been adjourned, the manner in which the judge is to report to the Judicial Conduct Committee and the period within which to do so.
- 24.14 Where the Judicial Conduct Committee receives a report from the judge and is of opinion that the determination has been complied with, it shall notify the judge and the complainant that the investigation of the complaint is concluded.
- 24.15 Where the Judicial Conduct Committee does not receive a report from the judge within the specified period, or receives a report but is not satisfied that the determination has been complied with, the Judicial Conduct Committee may take such further action as it considers appropriate in all the circumstances, including the making of a referral to the Minister for the purposes of Article 35.4 of the Constitution of Ireland.

## **25.0 Publication of the determination of the Judicial Conduct Committee**

- 25.1 Where a hearing relating to the investigation of a complaint has been held in public, the Judicial Conduct Committee *may* publish, or cause to be published, its determination.
- 25.2 Where some or all of the hearing relating to the investigation of a complaint has been held in private, the Judicial Conduct Committee may, for the purposes of safeguarding the administration of justice, decide to publish, or cause to be published, its determination, taking account of the extent to which the identities of the judge and/or the complainant have already been made public.

## **26.0 Referral by the Judicial Conduct Committee to the Minister for Justice of matter relating to conduct or capacity of judge for the purposes of Article 35.4 of the Constitution of Ireland**

- 26.1 Where the Judicial Conduct Committee determines that a matter relating to the conduct or capacity of a judge (whether or not arising from a complaint) requires the referral of the matter to the Minister for Justice (“the Minister”) for the purposes of Article 35.4 of the Constitution of Ireland, the Judicial Conduct Committee must make such referral.
- 26.2 Where at any time during the course of an investigation by a Panel of Inquiry of a complaint or a matter relating to the conduct of a judge in the absence of or after the withdrawal of a complaint, the Panel of Inquiry forms the opinion that a matter disclosed by the investigation relating to the conduct or capacity of the judge concerned is of such gravity as would justify an Article 35.4 referral by the Judicial Conduct Committee, the Panel of Inquiry shall submit a written report to the Judicial Conduct Committee in relation to the matter. The report must contain a record of the opinion of the Panel of Inquiry, the reasons for that opinion, and recommend to the Judicial Conduct Committee that it make a referral in relation to the judge concerned. Where a Panel of Inquiry makes such a report, it shall adjourn the investigation.
- 26.3 The Judicial Conduct Committee must, as soon as practicable after receiving the report, send a copy of the report to the judge concerned, together with a notice specifying the period within which the judge may make written submissions in relation to the report.
- 26.4 A statement or admission made by the judge concerned or evidence given to a Panel of Inquiry or a submission made to a Panel of Inquiry or to the Judicial Conduct Committee shall not be admissible in any proceedings in either House of the Oireachtas, or before a committee of either or both such Houses, in relation to an Article 35.4.1<sup>o</sup> motion.
- 26.5 The Judicial Conduct Committee must, as soon as practicable after the expiration of the period specified in the notice, consider the report received from Panel of Inquiry and the submissions (if any) made by the judge concerned.

- 26.6 If the Judicial Conduct Committee is satisfied that a referral pursuant to Article 35.4 is required, the Judicial Conduct Committee must, as soon as practicable, furnish to the Minister the report received from the Panel of Inquiry and the submissions (if any) made by the judge concerned in relation to that report, and the views (if any) of the Judicial Conduct Committee with regard to the report and the submissions (if any). Thereafter, the Registrar must notify the judge and provide them with a copy of the views (if any) of the Judicial Conduct Committee regarding the report or submissions.
- 26.7 Where the Judicial Conduct Committee makes a referral in relation to a judge, the Minister must, as soon as practicable thereafter, propose an Article 35.4.1<sup>o</sup> motion in either House of the Oireachtas in respect of the judge (unless the judge ceases to be a judge).
- 26.8 Where a referral under Article 35.4 is made, the Registrar shall notify the complainant in writing of the referral as soon as practicable after an Article 35.4.1<sup>o</sup> motion has been proposed by the Minister in Dáil Éireann or Seanad Éireann, as the case may be, in respect of the judge concerned.
- 26.9 If the Judicial Conduct Committee is not satisfied that the recommendation of the Panel of Inquiry should be accepted, the Judicial Conduct Committee shall direct the Panel of Inquiry to continue the investigation of the complaint or matter concerned with a view to its submitting its report to the Judicial Conduct Committee in the usual manner.

## **27.0 Privileges and immunities of witnesses**

- 27.1 A person who gives evidence to a Panel of Inquiry or to the Judicial Conduct Committee, or who is directed to produce or send a document to them, has the same immunities, privileges and liabilities in respect of that evidence or those documents, as a witness in proceedings in the High Court.

## **28.0 Confidentiality**

- 28.1 Unless otherwise provided within the 2019 Act, the details of complaints made, or investigations conducted by the Registrar, the Complaints Review Committee, the Panel of Inquiry or the Judicial Conduct Committee, as the case may be, shall be confidential.
- 28.2 If, notwithstanding paragraph 28.1, confidential information becomes public, the judge concerned may request that the Judicial Conduct Committee issue a statement to confirm the fact that the complaint is ongoing, clarify the procedural aspects of the proceedings, explain the judge's right to a fair hearing and provide the judge's response to the complaint.

## **29.0 Criminal offences**

- 29.1 It is a summary criminal offence for any person to publish or disclose any evidence given or the contents of any document produced by a witness while giving evidence to a Panel of Inquiry or to the Judicial Conduct Committee in private except as directed by a court, or to the extent necessary in the interests of fair procedures and with the written consent of the chairperson of a Panel of Inquiry or the Judicial Conduct Committee, as may be appropriate.
- 29.2 This does not prohibit the publication in a report under the 2019 Act of any findings by a Panel of Inquiry made on the basis of evidence given in private, or the publication in the annual report of the Judicial Conduct Committee of information arising from a determination of the Judicial Conduct Committee made on the basis of evidence given in private, subject to the restrictions contained in the 2019 Act. Neither does it affect the duty of the Panel of Inquiry to disclose the substance of evidence to any witness or person in accordance with section 83 of the 2019 Act.
- 29.3 It is a criminal offence to commit any contempt or perjury, or to fail to comply with a summons issued by the Panel of Inquiry or the Judicial Conduct Committee or while attending as a witness before the Panel of Inquiry or the Judicial Conduct Committee, to refuse to (1) take an oath lawfully required by the Panel of Inquiry or Judicial Conduct Committee to be taken, (2) produce a document lawfully required by the Panel of Inquiry or Judicial Conduct Committee to be produced, (3) answer any question that the person is lawfully required by the Panel of Inquiry or Judicial Conduct Committee to answer. The offence may be tried summarily or on indictment.