

ROAD USER CHARGING TRIBUNAL JUDICIAL COMPLAINTS PROCEDURE

Introduction

It has long been established that institutions which serve the public should have a considered and effective approach to the handling of complaints. In creating this Complaints Procedure for handling complaints of judicial misconduct made against Road User Charging Adjudicators (referred to henceforth as “Adjudicators”) regard has been had to “The Guidance for Handling Complaints against Judicial Office-Holders within Tribunals”¹, the “Judicial Complaints (Tribunals) Rules 2014”², and the “Judicial Conduct (Tribunals) Rules 2014 Supplementary Guidance”³. These Rules and Regulations do not govern this tribunal but so far as possible this procedure is aligned with them.

Where a user of the Road User Charging Tribunal makes a complaint which is not about judicial misconduct (e.g. if they complain about the state of the waiting facilities) then the complaint will not be dealt with under this procedure which is exclusively concerned with judicial misconduct. Similarly if the “complaint” is about the system, the scheme, or a particular process or procedure it will not be dealt with under this procedure but in the ordinary course of the Chief Road User Charging Adjudicator’s correspondence.

Where the complaint is made by tribunal staff against an adjudicator, or by one adjudicator against another adjudicator, the internal grievance process will be used rather than this procedure.

1. The underpinning principles

Five principles underpin this complaints handling procedure:

¹ Published by Her Majesty’s Courts and Tribunal Service 7 April 2006,
http://judicialcomplaints.judiciary.gov.uk/docs/Complaints_Guidance.pdf

² [http://judicialcomplaints.judiciary.gov.uk/docs/Judicial_Complaints_\(Tribunals\)_Rules_2014.pdf](http://judicialcomplaints.judiciary.gov.uk/docs/Judicial_Complaints_(Tribunals)_Rules_2014.pdf)

³ [http://judicialcomplaints.judiciary.gov.uk/docs/Judicial_Conduct_\(Tribunals\)_Rules_2014_Supplementary_Guidance.pdf](http://judicialcomplaints.judiciary.gov.uk/docs/Judicial_Conduct_(Tribunals)_Rules_2014_Supplementary_Guidance.pdf)

1. Openness – all parties must be given the opportunity to participate and express their views in regards to any complaint. No complaint will be determined against an Adjudicator without giving that individual the opportunity to comment on the complaint.
2. Timeliness – the ability of all parties to recall events accurately will decrease with time. Therefore clear targets will be set for every stage of the process once a complaint has been received to ensure that complaints are dealt with as promptly as possible. However, if a complaint relates to an issue or issues which may be amenable to review or to a case which is ongoing, a response or, indeed, any investigation, may have to be deferred until the case is concluded.
3. Fairness – complaints should be dealt with consistently and the procedure must be fair to both the complainant and the Adjudicator who is the subject of the complaint. This procedure explains the processes and the standards to be used. All complaints will be investigated and decided by another Road User Charging Adjudicator appointed by the Chief Road User Charging Adjudicator (referred to henceforth as the “Chief Adjudicator”) for this purpose (“the Investigating Adjudicator”). A complainant or Adjudicator who disagrees with a decision of the Investigating Adjudicator will have a right of appeal to the Chief Adjudicator or, if the complaint relates to the Chief Adjudicator or they were the Investigating Adjudicator, to the Chief Parking and Traffic Adjudicator. If a complainant or Adjudicator is dissatisfied with the outcome of the complaint they may make a complaint to the Office for Judicial Complaints. In addition, if either the complainant or the Adjudicator who was the subject of the complaint is dissatisfied with the manner in which a complaint was handled, they may contact the Judicial Appointments and Conduct Ombudsman to investigate this.
4. Accountability – those investigating and deciding a complaint are accountable for the decisions they make. This means that an investigation into a complaint must at all times be based on evidence. The Investigating Adjudicator will be expected to be able to justify the decision made on a complaint by reference to the evidence presented during the investigation

which should have been conducted in an inquisitorial manner to the civil standard of proof i.e. on the balance of probabilities.

5. Confidentiality – information gathered during the investigation of a complaint is confidential between the parties involved, the Investigating Adjudicator and anyone determining a review of an Investigating Adjudicator's decision (although disclosure may be permitted under Section 139 of the Constitutional Reform Act 2005).

2. The Aims and Scope of the Complaints Procedure

The procedure is not intended to introduce an excessively elaborate approach to dealing with complaints of judicial misconduct. It aims to:

- Deal with genuine complaints of judicial misconduct fairly and appropriately whilst ensuring that time is not wasted pursuing enquiries into vexatious or malicious complaints.
- Ensure that Adjudicators are seen to be unbiased and to make decisions that are not affected by prejudice.
- Maintain the confidence of the public that Adjudicators within the Road User Charging Tribunal live up to the very high standards expected of them in discharging their judicial duties.
- Allow Adjudicators to learn from genuine errors in regards to their personal conduct while ensuring that they have a fair opportunity of responding to a complaint .

3. What is “judicial misconduct”?

The sort of judicial misconduct which may be complained about includes:

- Discrimination
- Inappropriate behaviour and comments, including rude or offensive remarks, shouting, banging the table or speaking in a sarcastic manner
- Misuse of judicial status (e.g. using judicial title for personal gain)

- Not fulfilling judicial duties (e.g. unacceptable delay in reaching a decision)
- Criminal convictions
- Professional misconduct (e.g. findings by a professional body)

Examples of what is not covered by 'personal conduct' include:

- Complaints about a judicial decision (e.g. the outcome of an appeal hearing including any alleged conflict of interest)
- Complaints about case management decisions (e.g. whether a case should have been adjourned)

4. What is a complaint?

In order for the process to begin a complaint must be received and considered by the Chief Adjudicator.

What is a complaint?

1. A complaint is an expression of dissatisfaction about a particular Adjudicator as opposed to someone simply expressing views on 'the system' or a particular process or procedure.
2. The complaint must be made or recorded in writing i.e. by letter or e-mail – therefore if made orally it may only be accepted as a complaint if the complainant is told and agrees that it is put down in writing. The complaint must be received in the English language. Arrangements will be made for anyone who is unable to write down a complaint, for example because of language difficulties or disability.
3. The complaint must contain an allegation of misconduct; give the time and date of the alleged misconduct, and provide the name and address of the person making the complaint. For example a complaint which simply states that the adjudicator was rude is not adequately particularised – the complainant should say what the adjudicator did or said so as to behave inappropriately and at what part of the hearing this occurred.
4. The complaint must not be vexatious – the Chief Adjudicator may decide that a complaint has already been answered or is malicious and so requires

no further action, other than a response to that effect. The receipt of new evidence, however, may justify a new investigation.

5. The complaint will not be accepted if the complainant says that they do not wish the subject of the complaint to see a copy of the complaint or for the complainant's identity to be disclosed.

6. The complaint must be accompanied by the originals or copies of any documents within the control of the complainant to which he or she intends to refer.

5. Action on receipt of a complaint

On receipt of a complaint the Chief Adjudicator will determine whether or not an allegation of misconduct has been made by the complainant. If the Chief Adjudicator deems there is no valid complaint of judicial misconduct the Chief Adjudicator will dismiss the complaint and write to the complainant informing them of this and no further action will be taken. The Chief Adjudicator will dismiss the complaint if it falls into any of the following categories:

- It is about a judicial decision or judicial case management
- It is vexatious or without substance, untrue, mistaken or misconceived
- It does not particularise the matter complained of
- Even if true it would not require any action to be taken
- It is about the private life of an adjudicator not affecting their suitability to hold judicial office
- It is about the professional conduct in a non-judicial capacity of an adjudicator not affecting their suitability to hold judicial office
- It raises a matter which has already been dealt with, whether under these rules or otherwise, and does not present any material new evidence.

Even if the Chief Adjudicator deems there to be no complaint of misconduct and dismisses the complaint, the Chief Adjudicator may still give the tribunal member such advice as the Chief Adjudicator considers necessary. If the

complaint is dismissed as invalid the Chief Adjudicator is not obliged to inform the subject of the complaint but may do so as a matter of discretion.

6. If a valid complaint is made

If the Chief Adjudicator determines that there is a 'valid' complaint of judicial misconduct capable of investigation then the Chief Adjudicator will appoint another Adjudicator to act as the Investigating Adjudicator. The overall responsibility will nevertheless remain with the Chief Adjudicator.

The subject of the complaint cannot be the Investigating Adjudicator nor may any Adjudicator who has had dealings with the complainant's appeal act as such if the complaint has come from an Appellant involved in an appeal before the Road User Charging Tribunal.

If the Chief Adjudicator is the subject of the complaint then the Chief Parking and Traffic Adjudicator will determine if the complaint is valid (following the process outlined above) and will appoint a Road User Charging Adjudicator to be the Investigating Adjudicator.

The Investigating Adjudicator will investigate the complaint in accordance with this procedure adopting an inquisitorial approach and will determine whether or not the complaint is made out on the balance of probabilities. The Investigating Adjudicator will then write to both the complainant and the Adjudicator explaining their investigation and their conclusions.

The subject of the complaint is responsible for co-operating with the investigation process and for responding to requests for comments and information in a timely manner.

A complainant or Adjudicator who disagrees with the decision of the Investigating Adjudicator will have a right of appeal to the Chief Adjudicator or, if the complaint relates to the Chief Adjudicator or they were the Investigating Adjudicator, to the Chief Parking and Traffic Adjudicator.

7. When will complaints not be investigated under this procedure?

A Complaint will not be investigated under this Procedure (irrespective of its merits) in the following circumstances:

1. If an adjudicator no longer holds judicial office in the Congestion Charging Tribunal (e.g. because they have retired or resigned).
2. If the adjudicator is a member of another court or tribunal and the complaint is being investigated by that court or tribunal.
3. Where the issue complained about was done by someone else (e.g. a member of the administrative staff).
4. Where the issue complained about does not fall within the definition of 'judicial misconduct'.

8. Investigation of a complaint

In investigating the complaint the Investigating Adjudicator may take such steps as they consider to be appropriate including:

- Seeking further clarification or detail from the complainant;
- Interviewing the Adjudicator that is the subject of the complaint;
- Interviewing other potential witnesses to the personal conduct alleged;
- Listening to any audio recording of a hearing or obtaining a transcript of a hearing;
- Examining any paperwork relating to the appeal.

In undertaking their investigation the Investigating Adjudicator may receive assistance from members of the administrative staff in:

- Checking basic factual information relating to a complaint
- Identifying other potential witnesses
- Assembling materials
- Communicating with the parties to the complaint

Information provided during the course of a complaint investigation will be considered to be confidential to the person who disclosed it (whether the complainant, the subject of the complaint, or a third party) but may be disclosed in accordance with Section 139 of the Constitutional Reform Act 2005.

9. Resolving the complaint

If a complaint has been deemed valid and has been investigated by an Investigating Adjudicator a response to the complaint will be created by the Investigating Adjudicator (the “resolution letter”) and will be sent to the complainant and the subject of the complaint. The resolution letter shall:

- Summarise the nature and substance of the complaint;
- Describe the investigation process;
- Summarise the conclusions giving reasons for each conclusion.

Where a complaint is dismissed (for instance where the evidence available does not suggest that the personal conduct more likely than not occurred) this will be made clear in the response to the complainant and the subject of the complaint.

Where it is determined that the personal conduct asserted in the complaint is more likely than not to have occurred, either entirely or in part, an appropriate response will be sent to the complainant and the subject of the complaint. The response will, where necessary, offer a formal apology. It will deal only with the subject matter of the complaint and will not disclose whether any disciplinary action has or is to take place in light of the complaint.

In any case where a complaint is entirely or partially substantiated the Chief Adjudicator or Chief Parking and Traffic Adjudicator will decide what further action, if any, needs to be taken regarding any Road User Charging appeal or with the Adjudicator who has been the subject of the complaint, including issuing guidance or advice to that Adjudicator. Whatever action is taken will be recorded in the Adjudicator’s personal file.

10. Disciplinary action

This is not a specific part of the Road User Charging Tribunal Judicial Complaints Procedure. If the Chief Adjudicator considers that disciplinary action is needed the Chief Adjudicator will follow the Road User Charging Tribunal Disciplinary Procedure.

11. Referring the case to the Office for Judicial Complaints

This is not a specific part of the Road User Charging Tribunal Complaints Procedure and therefore guidance on when and how to raise concern with the Office for Judicial Complaints should be sought either by contacting them at the address given below or by visiting their website.

12. Complaining to the Judicial Appointments and Conduct Ombudsman (JACO)

This is not a specific part of the Road User Charging Tribunal Complaints Procedure and therefore guidance on when and how to raise concern with JACO should be sought either by contacting them at the address given below or by visiting their website.

13. Time Targets

Any complaint about an Adjudicator's personal conduct should be made within 28 days of the behaviour occurring. Even though the time limit for complaints under the Judicial Conduct (Tribunals) Rules 2014 is 3 months a shorter time is considered appropriate for this tribunal because of the bulk nature of its work and the potential infrequency of adjudicator sittings.

If a complaint is received more than 28 days after the behaviour is said to have occurred it will still be investigated but due regard will be had to the impact on individuals' memories.

If a complaint is received more than 84 days after the behaviour is said to have occurred it will not be investigated save in exceptional circumstances.

The fact that the complaint may contain an allegation of judicial misconduct is not in itself a sufficient reason for the Chief Adjudicator to extend the time limit.

The Chief Road User Charging Adjudicator will respond to the Complainant within 14 days of the complaint being received to confirm whether or not the complaint is accepted as valid and, if valid, with confirmation of the name of the Investigating Adjudicator.

The Investigating Adjudicator will then take over responsibility for the investigation of the complaint and will determine the appropriate steps for investigating the matter i.e. whether further detail will be sought from the complainant before informing the subject of the complaint about it or whether the Adjudicator complained about is notified immediately.

Whatever the sequence of events the Investigating Adjudicator will seek to resolve the complaint within 21 days of being tasked with determining the complaint.

If this is not possible the Investigating Adjudicator will write to the complainant and to the Adjudicator who is the subject of the complaint within 21 days and inform them of the revised timescale.

For long or complex investigations the Investigating Adjudicator will thereafter provide monthly updates as to progress of the investigation until the investigation is concluded.

A complainant or Adjudicator who disagrees with the decision of the Investigating Adjudicator will have a right of appeal to the Chief Road User Charging Adjudicator or, if the complaint relates to the Chief Road User Charging Adjudicator or they were the Investigating Adjudicator, to the Chief Parking and Traffic Adjudicator provided such appeal is made within 28 days of the date of the resolution letter. Any request for review outside of 28 days may be refused to be considered.

If a request for review is received, and accepted to be dealt with by the reviewing Adjudicator, this will not amount to a new investigation. The reviewing Adjudicator will determine whether or not the investigation process has been followed including whether an evidence based decision has been

reached. They will then provide, within 21 days of receipt of the accepted review request, confirmation either: (a) that they are satisfied that the process and procedure has been followed correctly and the decision reached is evidence based or (b) that the process or procedure has not been followed or the decision is not evidence based and will appoint another Investigating Adjudicator to carry out a fresh investigation.

14. A Complaints Database

The Chief Road User Charging Adjudicator wishes to monitor complaints made against Adjudicators and the efficiency of the processes for dealing with such complaints.

This information will be confidential and held in a file which will only be accessible to the Chief Road User Charging Adjudicator and those members of staff who require access to discharge their functions. Individual Adjudicators will have access to their personal records only.

15. Addresses

Road User Charging Adjudicators (RUCA)

London Tribunals
PO Box 10598
Nottingham
NG6 6DR

Telephone: +44-(0) 207 520 7200

e-mail: queries@londontribunals.org.uk

Website: <http://londontribunals.gov.uk/>

Office for Judicial Complaints

10th Floor Tower 10.52

102 Petty France

London

SW1H 9AJ

Telephone: +44-(0) 203 334 2555

Fax: +44-(0) 203 334 2541

e-mail: customer@ojc.gsi.gov.uk

Website: <http://judicialcomplaints.judiciary.gov.uk/>

Office of the Judicial Appointments and Conduct Ombudsman

9.53, 9th Floor Tower

102 Petty France

London SW1H 9AJ

Website: <http://www.justice.gov.uk/about/jaco.htm>