



# Traffic Commissioners for Great Britain

## Administrative Policy Guidance

### **THIRD PARTY COMPLAINTS PROTOCOL AND INTERNAL GRIEVANCE PROCESS**

This policy has no statutory basis and is issued with and is subject to the agreement of the Traffic Commissioner Board.

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## Introduction

1. All traffic commissioners seek to maintain the highest standards of personal and professional conduct. A complaint that a TC has fallen short of these standards is taken seriously.
2. This document sets out the procedures for dealing with complaints by third parties about the personal conduct of traffic commissioners and deputy traffic commissioners (hereafter referred to as TCs) in relation to their judicial and their administrative functions, subject to the qualifications set out in the protocol.
3. The protocol described below is designed to ensure that the complaints process is readily understood. It also communicates the process to ensure that any complaint is dealt with consistently, fairly and efficiently. The protocol is to be read in a way which is consistent with the Legal Framework. It shall not be implemented in a way which interferes with the TCs' statutory protections under the Public Passenger Vehicles Act 1981 and the Health & Safety at Work etc. Act 1974 and similar provisions. This document also sets out the scope of the protocol, the principles which govern its operation and the roles and responsibilities of those involved in handling complaints.<sup>1</sup>
4. The document also provides the means by which internal concerns which may relate to the behaviour of OTC staff, either individually or collectively, or of TCs should be raised.
5. The processes described only apply to those TCs that are in post at the time of the complaint or grievance being made. If a TC vacates their post during the course of a complaint it is not possible to proceed with a complaint under this protocol.

## Key Features of the Third-party Complaints Protocol

6. The principles of fairness, transparency and consistency require a clear process. The process to be followed will not be materially amended save in exceptional circumstances.
7. The procedures exist to address complaints that arise when it might be considered that a TC's conduct may not have been in accordance with the [Guidance on Traffic Commissioners' Conduct](#).
8. It is not possible to describe every ground which might lead a person to lodge a complaint about a TC's personal conduct. Complaints may concern personal behaviour at a public inquiry or driver conduct hearing. Some examples of personal conduct which could be viewed as inappropriate are:
  - the use of racist, sexist, offensive or otherwise inappropriate language;
  - rude or offensive conduct;
  - falling asleep in a public inquiry or hearing;
  - misusing public status for personal gain or advantage;
  - allegations of a conflict of interest.

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<sup>1</sup> It is intended that these procedures align, as far as possible, with the equivalent rules for the judiciary, details can be found at: <https://judicialconduct.judiciary.gov.uk/rules-regulations>

9. These procedures apply to all complaints about TCs made in accordance with the procedures set out in this document. All third-party complaints shall be brought to the attention of the Senior Traffic Commissioner (STC).
10. The protocol recognises the judicial independence of each TC. Complaints relating to judicial decisions made by TCs or to the reasoning processes underlying a decision or the case management prior to such a decision, including the decision to call an operator or an applicant for an operator's licence to public inquiry<sup>2</sup> or similar disposal may form grounds of appeal to the Upper Tribunal Administrative Appeals Chamber, or exceptionally the Administrative Court (High Court) or Court of Session.<sup>3</sup> Vocational driving licence holders and applicants for vocational licences have a right of appeal against the decision of the TC to the magistrates' court or Sheriff court. If the matters complained of are in essence a ground of appeal, then they do not fall to be considered under this Protocol.
11. Complainants should consider in the first instance whether a complaint about a TC's judicial decision should be submitted to the appropriate appeals body. Examples of where this is appropriate include (but are not limited to):
  - a TC's decision or ruling;
  - the evidence that has or has not been considered or how that has been allowed to be set out;
  - the right to be represented at the hearing;
  - allegations of bias in respect of a hearing;
  - a refusal to allow an adjournment.
12. Persons who are dissatisfied with a TC's decision or any related procedures should take independent legal advice and may appeal to a higher court if so advised.
13. Any complaint made that falls to be considered under this protocol, will not be addressed whilst any related matter remains subject to decision in a higher court.

### **Role and Responsibilities of the Senior Traffic Commissioner**

14. The STC has the overall responsibility for the investigation and adjudication of complaints concerning other TCs.
15. The STC shall make such arrangements as are necessary to ensure that complaints can be dealt with in the absence of the STC including the appointment of another TC to act on behalf of the STC in this regard. A TC who is the subject of a complaint clearly cannot deputise for the STC in that respect.

### **Making a Complaint**

16. All complaints regarding the conduct of a traffic commissioner must be made in writing and either:
  - sent by post to the Office of the Traffic Commissioner, Traffic Commissioners'

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<sup>2</sup> See paragraph 101 of *Al-Le Logistics ad Ors v The Traffic TC for the South Eastern and Metropolitan Traffic Area 2010*] EWHC 134 (Admin) for confirmation that pre Inquiry determinations are judicial not administrative

<sup>3</sup> See paragraph 107 of *Al-Le Logistics ad Ors v The Traffic TC for the South Eastern and Metropolitan Traffic Area 2010*] EWHC 134 (Admin)

Corporate Office, Hillcrest House, 386 Harehills Lane, Leeds, LS9 6NF or

- delivered by email to: [tcco@otc.gov.uk](mailto:tcco@otc.gov.uk)

17. Complaints sent by post should be marked 'Confidential'.
18. Correspondence will not be considered as a complaint unless it is received by these means. It is possible that a person may seek to complain directly to a TC, such correspondence will not be deemed as a formal complaint to be considered under this protocol. Where a TC receives a complaint directly that cannot be resolved informally he/she should direct the complainant to the provisions in this protocol.
19. The STC (or those acting on the STC's behalf) will acknowledge receipt to the complainant within seven days of receipt enclosing a copy of the Complaints Protocol or a link from where it can be downloaded.
20. The STC will arrange for a copy of the complaint and any supporting documents to be sent to the relevant traffic commissioner within seven days of receipt.

### **The Complaints Process**

21. All complaints received under this process will be considered using a two stage process. Stage one of the process considers whether a complaint meets the requirements to be deemed admissible on administrative grounds. These grounds are set out in Annex A.
22. Once a complaint is deemed admissible it will progress to stage two where it will be investigated and the STC will provide a determination on how it is proposed that the complaint will be disposed of. All complaints considered in stage two will be subject to an investigation.

### **Stage One - Validity of Complaint**

23. To be deemed admissible a complaint must satisfy the requirements set out in Annex A. Staff supporting the STC will make an assessment of a complaint against the criteria and provide a written report to the STC within 14 days of receipt of the complaint that sets out whether the complaint satisfies the criteria to be considered valid.
24. The STC must dismiss the complaint, or part of the complaint, if it does not satisfy the relevant criteria.
25. Subject to availability, the STC will consider the report and provide a determination to the subject TC and complainant within 14 days.
26. If a complaint is considered invalid, the complainant will be notified in writing that the STC proposes to dismiss the complaint stating the reasons. Complainants will then be given seven days to make further representations to the STC as to why the complaint should be regarded as valid.
27. The STC will consider any further representations and issue a final determination on the validity within 14 days of receipt.

## Stage Two - Investigation

### *Formal investigation of a complaint*

28. Any complaint that meets the criteria set out in Annex A will result in the STC invoking the formal investigation process and procedure.

### *The investigating officer*

29. The STC will appoint an official from within the Office of the Traffic Commissioner to investigate.
30. The purpose of the investigating officer is to advise the STC:
- a) as to the facts of the complaint;
  - b) a recommendation on whether the complaint is substantiated or not;
  - c) a recommendation on whether the findings of the investigation are such that the Secretary of State may wish to consider whether the matters are contrary to the traffic commissioner's terms of appointment;
  - d) as to any other matters relevant to the investigation.
31. The STC may provide case management instructions to officials as to how the complaint is to be investigated.
32. The investigating officer will maintain confidentiality at all times and not disclose details of the complaint to any person save for the STC or nominated member of staff employed within the Traffic Commissioners' Corporate Office.

### *Procedure of investigation by investigating officer*

33. Subject to any specific case management instructions directed by the STC the investigating officer:
- i. will invite the subject TC to make representations about the complaint;
  - ii. may invite the complainant or any person whom he/she considers can assist the investigation to give relevant information about the complaint;
  - iii. may take oral information if he/she considers it necessary to do so, arranging for any evidence given orally to be recorded in a transcript or a digital recording;
  - iv. disclose any evidence obtained under paragraph b) to the TC and must invite him/her to make representations on the evidence. Any representations must be received within 14 days of the invitation;
  - v. obtain a recording of any relevant public inquiry or hearing.
34. Representations are sought for the purposes of assisting the investigating officer to discharge their responsibilities to the STC. Evidence received by the investigating officer is not disclosable to any other party other than the circumstance set out in point iv. above.
35. Where the investigating officer considers that it is necessary to disclose evidence obtained during the course of an investigation to any person other than the STC, he/she must first invite:

- a) the person who provided the evidence, and;
- b) the subject TC

to make representations about the proposed disclosure. Any representation must be received within 14 days of the invitation.

36. Evidence and representations must be provided to the investigating officer within 14 days of the invitation under paragraphs a) or b).

#### *The report of the investigating officer*

37. The investigating officer will provide a report to the STC within 14 days of the latest date for the receipt of any evidence provided to the investigating officer.

38. Subject to any specific terms of reference, the investigating officer may decide the form and content of his/her report.

39. The report must contain a factual summary of the allegation and the evidence provided by the complainant and the subject TC along with a summary of any further evidence relied upon.

40. The report will include a recommendation as to whether the complaint should be dismissed on any of the following grounds:

- the action complained of was not done or caused to be done by a TC
- it is frivolous or vexatious (i.e the complaint has been made habitually and persistently and without any reasonable ground<sup>4</sup>)
- it is without substance
- it is untrue, mistaken or misconceived
- it raises a matter which has already been dealt with, whether under this Protocol or elsewhere, and does not present any material new evidence
- it does not set out sufficient detail of the allegation
- for any other reason it does not relate to misconduct by a TC

#### **Consideration by the Senior Traffic Commissioner**

41. Upon receipt of a report from the investigating officer the STC will, wherever possible, within 21 days provide a determination to the complainant and subject TC. This period will only be extended if circumstances exist that warrant doing so, e.g. annual leave or other work priorities.

42. The determination of the STC will set out the finding on whether the complaint is a valid complaint or that the complaint is not made out.

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<sup>4</sup> The principle of refusing unreasonable or vexatious applications is recognised under the PPVA 1981

43. A copy of the draft determination will be sent to the subject TC providing the opportunity for representations on the factual findings only. Any representations must be received within seven days of the invitation.
44. The STC will consider any representation made by the subject TC and issue within seven days a final determination to the complainant and the subject TC.
45. If the STC considers that the complaint is valid the determination will set out the course of action to resolve the complaint. The resolution could include:
  - a) referring the matter to the subject TC with a recommendation for action on part of that TC;
  - b) proposing that the subject TC's performance is formally appraised;
  - c) proposing that the subject TC undergoes re-training and setting out what this may include;
  - d) issuing formal advice to the subject TC;
  - e) taking no action as the matter in itself is not severe enough to warrant intervention;
  - f) in serious cases, referring the matter to the Department for Transport (DfT) for further investigation or action.
46. Referral to the DfT will only occur in those cases where a TC's behaviour or performance could lead to issues affecting their future appointment as a traffic commissioner. Such instances may include:
  - serious allegations of non-compliance with the Equality Act;
  - where there is a history of similar or related complaints;
  - any other significant complaint for example allegations of fraud, misfeasance in public office or other criminal offences.

### **Withdrawal of a Complaint**

47. A complaint may be withdrawn at any time. The complaint will be treated as withdrawn if correspondence is not responded to by a complainant within 21 days of receipt. Where a complaint is withdrawn the TC who is the subject of the complaint shall be notified in writing within seven days of the withdrawal.
48. Special circumstances may apply where the complaint raises serious concerns about a TC's conduct, but a complainant does not respond to correspondence within 21 days, as it may be contrary to the public interest to ignore any serious cause for concern. An investigation may be carried out on the basis of any other available information, even if the complaint has been withdrawn, subject to the requirements of natural justice.

### **Complaints about the Senior Traffic Commissioner**

49. Any complaint relating to the STC acting in his or her role as a TC or STC should be received in accordance with the above section 'Making a Complaint'.
50. Complaints received about the STC acting in his or her role as a TC, or as STC on non-statutory matters as agreed by all TCs or in accordance with their

statutory powers will be referred to the DfT who will appoint another full time TC currently in post to act as Decision Officer in accordance with these procedures. This will usually fall to the TC with seniority.

51. Complaints received by the STC about the STC in that function shall be referred by the STC to the DfT who shall nominate an appropriate<sup>5</sup> person to investigate and record such complaints in accordance with these procedures.
52. Where the DfT (on behalf of the Secretary of State for Transport) receives a complaint directly about the STC acting either in his or her role as a TC or in respect of his or her role as STC, the complaint shall be processed in accordance with these procedures and the STC shall be notified within 14 days of the receipt and details of the complaint.

### **Review on behalf of the Department for Transport (Secretary of State)**

53. In the event that either the complainant or the subject TC is dissatisfied with the conclusion and recommendation of the report they may apply to the Senior Traffic Commissioner for leave to request that the DfT (acting on behalf of the Secretary of State) review the handling of the complaint.
54. Requests for a review can only be made on the following grounds:
  - that a procedural error with the Protocol has occurred;
  - that the decision made by the STC does not meet the test of reasonableness, i.e. no other similar office holder would have come to the same conclusion.
55. On reviewing the request the STC will consider either:
  - granting the request for review;
  - refusing the request for review;
  - in the case of a procedural error consider whether to set aside the determination and restart the process.
56. If the STC grants leave for the complaint to be reviewed they will arrange for the relevant papers to be transferred to the relevant official in the DfT.
57. The review may cover:
  - a) any finding of fact;
  - b) any decision or recommendation as to the conduct of a TC;
  - c) any action which has been proposed or taken;
  - d) the procedures which have been used to deal with the case, but only so far as necessary to enable the review body to deal with the matters in subparagraphs (a) to (c) above.
58. The DfT will consider whether it is appropriate to appoint a current or retired judicial office holder to conduct the investigation. This decision will be taken on the degree of complexity and seriousness of the allegations.
59. The decision of the reviewer shall be final (subject to compliance with the

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<sup>5</sup> In determining if a person is 'appropriate' the Department shall have regard to the Legal Framework.



requirements of the Public Passenger Vehicles Act 1981 which governs the appointment of traffic commissioners).

- 60. The provisional review decision shall be sent to the TC in the first instance for comment and the final decision sent to the Secretary of State and TC as soon as practicable thereafter.

**Determination of a complaint**

- 61. The following possible outcomes are included to aid clarity and provide greater certainty to complainants and TCs.

<b>Determination</b>
Formal Advice
Formal Warning
Reprimand
Recommendation to the Secretary of State for consideration under paragraph 1 of Schedule 2 of the Public Passenger Vehicles Act 1981

- 62. Examples of how they might be applied are included at Annex B. Those are only examples and should not be treated as exhaustive.
- 63. The sanctions for the judiciary are provided for in the Constitutional Reform Act 2005. Unlike the judiciary, the removal of a TC from office is ultimately a matter for the Secretary of State. A determination which finds the most serious misconduct must therefore be referred to the Secretary of State. The Department for Transport relies on the Supreme Court judgment in *Gilham v Ministry of Justice* [2019] UKSC 44, [2019] 1 WLR 5905, requiring recognition of the separation of powers. In the absence of a process and which defines Schedule 2, the Judicial Conduct and Investigations Office website offers examples of relevant disposals: [Judicial Conduct Investigations Office - Courts and Tribunals Judiciary](#) It is useful to note the relevance of factors such as prompt disclosure, a previously unblemished conduct record, acceptance of responsibility, remorse etc. to those considerations, although the position is different if conduct is repeated.
- 64. TCs will be free to continue sitting while a complaint is investigated unless the allegation is so serious that, if proven, there is a serious possibility that the Secretary of State might consider removal from office under paragraph 1 of Schedule 2 of the Public Passenger Vehicles Act 1981, and it could, therefore, undermine public confidence in the jurisdiction, if the office holder continued to sit in the meantime. The Secretary of State has no power of suspension under Schedule 2, but can issue statutory directions to the Senior Traffic Commissioner under section 4D of the Act, relating to how the Senior Traffic Commissioner might use the deployment power under section 4B, subject to the limitations in sections 4B(4)-(8).

**Resolving Internal Relationships within the OTC workplace**

- 65. This section is intended to detail how to specifically address concerns relating to

behaviour and individual performance in the OTC workplace. These concerns may relate to the behaviour of OTC staff, either individually or collectively, or of TC or DTC colleagues. This guidance sets out the processes to follow where a TC has concerns, which relate to general OTC performance. Where OTC staff have concerns about the behaviour of other OTC or DVSA staff they should follow the guidance given in their Staff Handbook and other related documentation.

66. TCs and DTCs do not work in isolation but TCs and DTCs are independent and so do not fall within the processes ordinarily used by the Civil Service to resolve concerns in the workplace including those concerns, which can or might be addressed through informal discussion; workplace mediation; or more formal investigations procedures. The absence of such processes can hinder supportive working and might lead to a perception that there is no channel whereby concerns can be raised. Patently, civil servants and colleague TCs and DTCs must be able to raise genuine concerns without fear or undue anxiety. It is a shared aim that everyone is treated fairly at work, so that skills and opportunities are not undermined and we avoid feelings of isolation. It is perhaps inevitable that, from time to time, TCs, DTCs or OTC staff members will feel worried or concerned at all sorts of differing issues.
67. It is in the interests of the jurisdiction and all who work with OTC that any issues are resolved quickly, fairly and appropriately. It is necessary to draw a distinction between those concerns that relate to an individual's behaviour and those which are organisational and overall performance concerns. It is also important to distinguish those issues, which can and should be resolved informally without further process and those which require more formal consideration.
68. Wherever anyone working with or within OTC is uncomfortable with someone's behaviour, s/he should try to have an honest and open discussion with the person concerned. If it is not possible to talk directly with the colleague, a manager or the STC may act as a facilitator and/or may suggest other informal ways in which to resolve the issue. Managers will try to offer support to employees to try to resolve issues informally.
69. Where TCs or DTCs have a concern about a member of staff, including specific performance issues, the TC or DTC can raise such concerns locally or as necessary to HOTC and inform or involve the STC as needs be, according to the seriousness or otherwise of the concern. Any DTC having concerns should share concerns with the full-time TC deployed to the traffic area or STC; there may be organisational or resource arrangements of which the DTC is unaware and to resolve or pre-empt misunderstandings. TCs and DTCs recognise that civil servants are employees and work within their own terms and conditions including the Civil Service Code. Where a TC or DTC raises a concern, it will usually be for the OTC management (at relevant level) to consider and manage as appropriate.
70. OTC managers should try to resolve informal issues or concerns, wherever possible. Listed below are some examples of issues that should be dealt with under normal management action by staff employed within the OTC:
  - General disagreements between members of staff, and a TC or DTC
  - Availability to sit
  - Accommodation issues that do not constitute a breach of health and safety legislation

- General working environment issues, etc
71. Low level or one-off incidents are better resolved more informally as this is more likely to bring about a resolution that is satisfactory to everyone. Serious or recurring concerns raised may ultimately have to be referred through HOTC as a third party complaint. Some issues might be resolved through workplace mediation. DfT and DVSA have access to those facilities.
  72. Where a TC or DTC has concerns related to the behaviour of a fellow TC or DTC and they do not feel able to raise them directly with them, they should raise the concerns with the STC who will consider whether it is possible to resolve the issue informally. If the concerns involve the STC then s/he should direct them to the next longest serving traffic commissioner.
  73. Where it is not possible to resolve an issue informally then it should proceed as a complaint via the HOTC (where a member of OTC staff is involved) or the STC (where it relates to a TC or DTC). The member of staff must be a serving civil servant within the OTC or TC or DTC. A member of OTC staff intending to pursue a complaint must have notified his or her manager(s) (at least STL level) of the issue or incident and allowed that manager(s) an opportunity to consider whether the complaint is one against DVSA or DfT as opposed to anyone else.
  74. Any complaint under this process must be made without unreasonable delay and within one month of the issue or incident, which forms the basis of grievance. This is to allow for prompt, transparent, fair and consistent treatment of all. Those involved in making, receiving or processing the internal complaint should consider the potential for informal resolution; be respectful of others; work to resolve the issue; and maintain appropriate confidentiality.
  75. The complaint must be set out in writing and submitted either to the HOTC or STC. It will be for the HOTC or STC to arrange for the person complained against to be notified and of the procedure to be followed including inviting the person complained against to make any written observations at that stage should they so wish.
  76. Where the HOTC or STC considers the grievance to be obviously frivolous, vexatious or a resubmission of a grievance already determined, then the HOTC or STC may reject the complaint without further procedure and will inform the complainant in writing.
  77. The HOTC or STC will arrange for a meeting to be held promptly after the written complaint is received. The Decision Officer (HOTC or STC) should invite the complainant to meet to discuss the internal complaint, if possible within five working days of its receipt. The Decision Officer may instruct such further investigations as are necessary to elucidate the grievance and if possible, before meeting the complainant.
  78. The meeting with the complainant is to allow the individual to explain their concerns and to state how they think they should reasonably be resolved. At the meeting, the Decision Officer will assess the complaint. The Decision Officer will decide what further procedure, if any, is required. Such further procedure must ensure that the person complained against is given full opportunity to respond including meeting the Decision Officer. The Decision Officer should ensure that the timetable for any further meetings or investigation is tight and that parties are

kept informed of progress and any reason for delay(s).

79. The decision on the complaint must be communicated to the individuals and, where appropriate, should set out what action may be taken to resolve the issue(s) raised. If the complaint has been resolved, that should be recorded including what led to such resolution.
80. A note-taker should be present at any meeting between the Decision Officer and the complainant, or the person complained against, and those notes may subsequently be disclosed to any HR officers.
81. If any party is aggrieved at the Decision Officer's determination s/he should seek further explanation. If s/he remains aggrieved, s/he may request that the matter is escalated to the Divisional Manager at DfT.
82. Complaints received about the STC shall follow the process described at paragraphs 50 to 52 above.

## **ANNEX A - CRITERIA FOR A COMPLAINT TO BE CONSIDERED VALID**

- 1. The complaint must be made in writing, be legible and the identity of the complainant must be disclosed.**

If the complaint is made orally, the complainant will be told that the complaint can only be investigated if it is put in writing. Complaints may be sent by post or email and they must specify both the full name of the complainant and their correspondence address.

- 2. Complaints must contain one or more detailed allegations of misconduct on the part of a named or identifiable traffic commissioner.**

The complaint must state the date, or dates the alleged misconduct took place. A complaint is to be accompanied by the documents within the control of the complainant on which they seek to rely. General complaints will not be investigated. An example of a general complaint might be a statement that all TCs are not impartial.

- 3. The complainant must consent for the complaint and accompanying documents to be disclosed to the TC.**

The STC must not accept a complaint as valid if the complainant does not consent to full disclosure to the TC. When a complainant states that the subject matter is confidential the initial response will explain that the complaint can only be taken forward if it is disclosed to the person who is the subject of the complaint. If the complainant does not reply within 28 days, then the complaint will be treated as withdrawn.

- 4. Complaints are not about a judicial decision or judicial case management.**

Some complaints, concerning personal conduct, may give rise to possible grounds of appeal to a higher court. Others are made while a case is continuing. In light of the overriding principle of fairness referred to above and the importance of the STC not being perceived as interfering in independent judicial decision making, it may not be appropriate to intervene. The STC wishes to discourage what might be seen as 'tactical' complaints which might undermine the overriding principles. Accordingly, this type of complaint will not normally be considered during the course of proceedings and the complainant will be asked to contact the STC once the case has been concluded. Even then if the matter complained of could have been made as part of an appeal to the Upper Tribunal then the STC is likely to decline to intervene.

- 5. A complaint must relate to a TC in their professional capacity.**

A complaint about the private life of a TC which could not reasonably be considered to affect their suitability to hold judicial office will be deemed inadmissible.

- 6. Complaints must be lodged as soon as possible.**

A complaint must be made within three months of the latest substantive event or the matter complained of. Where the complaint relates partly, or in full, to correspondence then the relevant date for the purposes of this section shall be a matter for the STC to determine having regard to the specific circumstances.

A complaint relating to a continuing state of affairs may be made at any time until three months from the last occurrence. It becomes more difficult to investigate a complaint as time passes and it is unreasonable to expect a TC to recall events after a long passage of time, particularly where a transcript of a hearing or paper or electronic file may no longer be available.

The STC may extend the time limit for making a complaint in exceptional circumstances upon a written request to do so from the complainant. Any request must be accompanied by the reasons as to why it could not have been made within the three month period.

The STC has an absolute discretion to reject any complaint which is, in his or her opinion, so out of time as to prevent an effective investigation.

Where the STC extends the relevant time limit they must notify both the complainant and the TC who is the subject of the complaint of the reason for the extension.

## **ANNEX B – EXAMPLES BASED ON JUDICIAL CONDUCT INVESTIGATIONS**

On appointment, TCs sign a declaration and understand that they must be circumspect in their conduct and maintain the dignity, and good reputation of the jurisdiction. TCs should show respect for, and observance of the law.

Conduct, both in and out of the tribunal, should be maintained and enhance the confidence of the public, the legal profession and litigants, in their personal impartiality and that of the jurisdiction.

TCs are expected to display diligence and care in the discharge of tribunal and connected duties.

Separate Administrative Policy Guidance offers guidelines on conduct, bias and board working and on the reporting of offences. TCs are expected to show regard to that guidance and to act accordingly.

The following examples of disposals through the Judicial Conduct and Investigations Office are provided as a starting point for how complaints against TCs might be addressed.

### **Example 1**

A Judicial Office Holder was found to have delayed issuing a decision for fifteen months after the hearing and had not given accurate indications to the party as to when the decision could be expected. The Judicial Office-Holder expressed regret regarding the delay and referred to a busy workload and an absence of decision-writing time, but nevertheless recognised the need to be more proactive. The office-holder was issued with formal advice.

The statutory directions in Statutory Document No. 11, requires TCs to use best endeavour to publish written reasons no later than 28 days from the date of the final hearing, or 28 days after the transcript becomes available. Where it is necessary to put conditions in writing to a party and to seek comments and/or agreement, the timetable starts with receipt of the response or further information. The STC will be notified if a relevant decision is delayed for a further period of more than 14 days. If a decision is delayed beyond 3 months, formal action may be required. Repetition may be escalated. TCs should also be aware of the administrative policy guidance on working hours.

### **Example 2**

On appointment, TCs are advised of the working hours. DTCs are expected to make themselves available to sit and to cover other work, which might be allocated to them as per their instrument of deployment. They are expected to keep in regular contact with OTC and be able to demonstrate commitment and reliability.

A part-time Judicial Office Holder was found to have sat for only two half-days and failed to respond to multiple communications. Promises to take action were not met. In light of the lack of sittings, communication and availability, it was recommended to remove the office-holder.

### Example 3

A Judicial Office Holder was found to have questioned a party in an inappropriate manner, which risked damaging confidence in the tribunal's ability to deal with the case fairly and justly. The office-holder accepted full responsibility for those actions and apologised immediately at the hearing. The office-holder was issued with formal advice for inappropriate conduct during a hearing.

### Example 4

A Judicial Office Holder was found to have rudely interrupted a party to proceedings and to have spoken in an inappropriate tone on multiple occasions, which caused distress. The decision noted the frustration arising during a difficult day and that the behaviour was out of character. The office-holder expressed remorse and undertook to prevent such incidents in future. The formal advice took account of the unblemished conduct history and that a number of allegations were not upheld.

### Example 5

A Judicial Office Holder was found to have behaved in a rude and hostile manner towards counsel in a hearing. Whilst not all the complaint allegations were made out, it was found that the office-holder intervened excessively during counsel's submissions, throughout the hearing, and in a manner which became increasingly harsh and rude. The office-holder accepted that frustrations had been allowed to show and that matters should have been handled differently. Sincere apologies were offered at the hearing. Taking account of the apology and commitment to learn from the experience and adjust future behaviour, the office-holder was issued with a formal warning.

The Administrative Policy Guidance on Conduct reminds TCs to treat everyone with the same attention, courtesy, consideration and respect.

Schedule 2 of the Public Passenger Vehicles Act 1981 sets out that the Secretary of State may remove a traffic commissioner from office on the grounds that the traffic commissioner –

- (a) has misbehaved; or
- (b) is unable, unfit or unwilling to perform the functions of traffic commissioner to a standard which the Secretary of State considers satisfactory.

It is for the Secretary of State to determine what would fall within the ambit of paragraph 1 of Schedule 2. The following examples are illustrative of formal disposals in respect to the actions of Judicial office holders, but which would fall out of scope of this protocol.

a) A Judicial Office Holder was disqualified from driving for six months after accruing penalty points on their driving licence for multiple, separate speeding offences. The office holder accepted that his conduct was below that required and apologised. Personal mitigation for two of the offences, was offered (committed in quick succession during the pandemic) and confirmation of measures in place to guard against a repeat. It was found that this amounted to serious misconduct but, taking account of the mitigation, the office-holder was issued with a formal warning.



b) In similar circumstances, where a Judicial Office Holder was later convicted of two further offences under the Road Traffic Act 1988, one of which related to being more than two times over the legal alcohol limit, it was recommended that the office-holder be removed from office for gross misconduct.

c) A Judicial Office Holder received six penalty points for holding a mobile phone whilst driving. He was issued with a penalty notice. It was claimed that this was to move a phone from an unsafe position. The offence represented a failure to display respect for and observance of the law and amounted to misconduct. The office-holder had reported the incident promptly, expressed genuine remorse, and cooperated with the process, impacting a previously unblemished record of conduct. The office-holder was issued with formal advice for misconduct.

d) Judicial Office Holder was found guilty of one count contrary to section 3(1) of the Dangerous Dogs Act 1991. It followed an incident whereby two dogs caused injury to another dog and its owner, which ultimately resulted in the death of the other dog. It was found that the conviction amounted to misconduct. The office-holder did not fully appreciate the implications of the conviction but mitigation included that the fact that the offence did not involve any dishonesty or intent, the matter had been reported promptly and the office-holder voluntarily refrained from sitting pending the outcome of the case. A formal warning was issued.

However, this is primarily a safety jurisdiction. TCs are required to make decisions in respect of vocational driving and operation within limited speeds. That type of conduct is likely to have a serious impact on the reputation of the jurisdiction, particularly if repeated, and may result in intervention by the Secretary of State.