



# Judicial Conduct Investigations Office

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Judicial Conduct Investigations Office  
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Marcus J Ball  
Via portal

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<http://judicialconduct.judiciary.gov.uk>

Our Ref: 32334/19

15 January 2020

Dear Mr Ball,

## Your complaint to the JCIO

Thank you for your complaint dated 19 December 2019. I can confirm that I have read your complaint in full and looked at the material you have referred to.

On a preliminary point, in your complaint you refer to the Guide to Judicial Conduct, March 2018 revision. The passage you have quoted did not correctly reflect the JCIO's role in relation to such cases. The current (March 2019) version of the Guide correctly reflects the position as follows:

*"Whilst the Judicial Conduct Investigations Office (JCIO) would not consider a complaint about recusal as it relates to a judicial decision, the JCIO could become involved if an appeal court's criticism of a judge for failure to declare a potential conflict of interest was so serious as to raise a question of judicial misconduct."*

I have attached a link for your reference:

<https://www.judiciary.uk/wp-content/uploads/2018/03/Guide-to-Judicial-Conduct-March-2019.pdf>

Turning to your complaint, in summary you allege that:

- a) Mr Justice Supperstone failed to declare conflicts of interest in your case, specifically that:
  1. He received payment of public funds totalling £35,500 from Boris Johnson when he was Mayor of London.
  2. That he and the Prime Minister are connected through their roles as Master Benchers of Middle Temple.
  3. He is associated with friends, family and political allies of the Prime Minister through the Garrick Club, though you make no allegation that he has a relationship with any of these members.

- b) Lady Justice Rafferty failed to declare conflicts of interest in your case, specifically that:
  - 1. Her husband was employed by Theresa Villiers MP, a political ally of Boris Johnson, receiving £848 per day in payment.
  - 2. She is a member of the Privy Council, as is Theresa Villiers MP, which you allege may have influenced her decision.
- c) The judgment given by Mr Justice Supperstone and Lady Justice Rafferty is ‘intellectually dishonest, contradicts Court of Appeal precedent and demonstrates predetermination’.
- d) Lady Justice Rafferty ‘winked’ at you as you bowed to leave court.

Please let me know if my summary is not correct or if I have missed anything out.

In considering complaints, this office follows statutory rules. Rule 21(b) of the Judicial Conduct (Judicial and other office holders) Rules 2014 (“the rules”) obliges the JCIO to dismiss a complaint, or part of a complaint, if it is about a judicial decision or judicial case management, and raises no question of misconduct. Regarding points a) and b) of your complaint, as reflected in the guidance referred to above, it is for individual judges to decide whether they have, and should therefore declare, a conflict of interest in relation to a particular case. Such decisions involve the exercise of independent judicial discretion which this office has no role in reviewing. Points a) and b) of your complaint are, therefore, dismissed under rule 21(b).

Should you wish to challenge the outcome of your case on the basis of one or more alleged conflicts of interest, the only means by which to do so, is an appeal to a higher court. This is because only a higher court would be in a position to rule whether a judge’s personal circumstances amounted to a conflict of interest in relation to a particular case, and whether the specific circumstances rendered the judge’s decision unsafe.

As also reflected in the guidance referred to above, if a higher court was so critical of a judge for failing to declare a potential conflict of interest as to suggest that misconduct had occurred, for example, as a result of deliberately or recklessly failing to declare an obviously relevant matter, the matter could then be referred to the JCIO for consideration. In other words, the determination of the higher court would be the perquisite for the JCIO’s involvement.

Point c) of your complaint is about a judicial decision and therefore also falls to be dismissed under rule 21(b). The JCIO has no role in reviewing judicial decisions. The only way to challenge a judicial decision is to appeal.

Regarding point d) of your complaint, rule 21(f) of the rules obliges the JCIO to dismiss a complaint, or part of a complaint that, even if true, would not require disciplinary action to be taken. In our assessment, even if your allegation that Lady Justice Rafferty “winked” at you was found to be true, this would not result in the Lord Chancellor and Lord Chief Justice deciding to take disciplinary action. This part of your complaint is, therefore, dismissed under rule 21(f).

## **Judicial Appointments and Conduct Ombudsman**

You can complain to the Judicial Appointments and Conduct Ombudsman, Paul Kernaghan CBE QPM, if you believe that we have not handled your complaint properly. The Ombudsman does not have the power to investigate the complaint itself, but he can consider how we handled it. You should make your complaint within 28 days of receiving this letter. The Ombudsman is not required to consider complaints outside this period, and will only do so if he believes it is appropriate in all the circumstances.

The Ombudsman's office can be contacted:

- In writing: 1.55, 1st Floor, The Tower, 102 Petty France, London, SW1H 9AJ
- By e-mail: [headofoffice@judicialombudsman.gov.uk](mailto:headofoffice@judicialombudsman.gov.uk)
- By telephone: 020 3334 2900

You can find further information about the Ombudsman at:

<https://www.gov.uk/government/organisations/judicial-appointments-and-conduct-ombudsman>

## **Your personal data**

You can find information about how the JCIO collects and processes personal data in our Privacy Notice, which is available in the 'Making a Complaint – What you can expect from us' section of our website: <https://judicialconduct.judiciary.gov.uk>

Yours sincerely,

Anthony O'Loughlin  
*Caseworker*  
Judicial Conduct Investigations Office