

# JUDICIAL DATA PROCESSING COMPLAINTS HANDLING POLICY

## Introduction

This policy sets out the standards and procedures that will apply when dealing with complaints concerning the processing of personal data by the courts and individuals acting in a judicial capacity.

The Data Protection Supervisory Judge (“the Judge”) is supported by the LCJ’s Office which is staffed by civil servants who provide support to the Judiciary of Northern Ireland. The LCJ’s Office, and particularly the Judicial Data Privacy Officer, support the Judge in considering and responding to complaints submitted to the Judge.

## Application

The Judge has jurisdiction to consider complaints concerning the following courts in Northern Ireland (“the Courts in scope”) and the individuals who act in a judicial capacity in these courts:

- Court of Appeal;
- High Court;
- Crown Court;
- County Court;
- Magistrates’ courts;
- Coroner’s courts.

## Complaints that can be dealt with by the Judge

The Judge can deal with two types of complaints:

### 1. Complaints over which the Judge has exclusive jurisdiction

There are two categories of complaint over which the Judge has exclusive jurisdiction. ‘Exclusive jurisdiction’ means that these categories of complaint cannot be referred to the Information Commissioner’s Office (ICO). That is because of the limit placed on the ICO’s supervisory powers by Article 55(3) of the UK General Data Protection Regulation (GDPR) and section 117 of the Data Protection Act 2018 (DPA 2018).

- The first category of complaints is those concerning the processing of personal data by the Courts in scope when they are acting judicially.
- The second category of complaints is those concerning the processing of personal data by individuals when they are acting in a judicial capacity. The most common types of situation where a court or individual will be acting in

a judicial capacity are when they are making judicial decisions in respect of legal proceedings such as giving case management directions, making court orders, hearing proceedings, writing or handing down judgments or orders.

## 2. Complaints over which the Judge does not have jurisdiction

These are complaints concerning the processing of personal data by individual judicial office holders (judges and tribunal members) in the course of their appointment when they are not acting in a judicial capacity. These complaints may be raised with the ICO. The Judge can, however, seek to investigate and try to resolve any such complaints before a formal complaint is made to the ICO.

These types of complaint may arise when a data subject has sought to exercise their rights in relation to personal data processed by a court, tribunal or a judge, tribunal member or individual and the request has been refused or rejected. They may arise when a data subject has, for instance:

- asked for confirmation that their personal data has been processed;
- asked for access to a copy of their personal data;
- informed the court or judge or other individual exercising judicial functions that they have withdrawn their consent to process their personal data;
- asked for their personal data to be corrected (rectified), erased or for restrictions to be placed on how it is processed;
- challenged or objected to their personal data being processed;
- objected to their personal data being used in automated decision-making or profiling;
- asked for their personal data to be transferred to a third party in a structured, commonly used and machine-readable format (in certain circumstances).

### **Complaints that cannot be dealt with by the Judge**

The Judge cannot deal with complaints concerning:

- the Freedom of Information Act 2000
- the processing of the personal data by courts when they are not acting in a judicial capacity.

If your complaint concerns either of these matters you should contact the Northern Ireland Courts and Tribunals Service who may be able to consider your complaint. You may also contact the ICO at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Further information on the protection of data can also be found on the ICO website <https://ico.org.uk>

## **Complaints that are not capable of rectification by the Judge**

There are two types of data subject request that are often made to, and refused by, courts and individuals:

- The first is that a copy of personal data processed by a court or individual acting in a judicial capacity be provided to the individual whose personal data it is. The basis on which such requests are made is the right of access under Article 15 UK GDPR or section 45 DPA 2018. Such information is typically contained in judicial notes, notebooks, or electronic documents.
- The second is that a judgment or court order that contains personal data be corrected because it is said to contain incorrect personal data. The basis on which these requests are made is the right to rectification contained in Article 16 UK GDPR or section 46 DPA 2018.

In both situations the personal data will have been processed by a court or judge acting in a judicial capacity. Parliament has decided that personal data processed in these situations is exempt from the right of access and from the right of rectification provided for by the UK GDPR. The exemption is set out in Article 23(1)(f) UK GDPR and section 15(2)(b) and Schedule 2, part 2, para.6; Schedule 2, part 2, para.14(2) DPA 2018. The reason for the exemption is to secure the constitutional principles of judicial independence and of the rule of law. Similarly, if these rights are exercised under sections 45 or 46 DPA 2018 they are restricted. The right of access is restricted by section 45(4) DPA 2018 and the right to rectification by section 48(3) DPA 2018. Accordingly, a court or individual that has processed such personal data whilst acting in a judicial capacity can properly refuse to provide access to or a copy of such data and refuse to correct such data under data protection law. Where a complaint is made to the Judge concerning a refusal to provide access to or a copy of such personal data or to correct it, it will not be investigated as the refusal will be within the scope of the statutory exemptions.

## **What to do if you are unsure whether to raise your complaint with the Judge**

If you are unsure whether a complaint should be referred to either the Judge or the ICO, you can email Judicial Data Privacy Officer at [LCJOffice@judiciaryni.uk](mailto:LCJOffice@judiciaryni.uk) or the ICO and they will be able to advise you.

## **Submitting your complaint**

You should submit your complaint in writing. The complaint should contain the following information:

- Your name and contact details;
- If you are complaining on behalf of someone else, such as a relative: their details; details of your relationship with them; and, signed confirmation you have their permission or the authority to act for them;

- the nature of the complaint and any documents relating to the complaint; and
- if the complaint concerns a data subject request that you have previously made about data processing by a court or individual acting in a judicial capacity, details of that request and the response to it.

You should submit your request either by email to the Judicial Data Privacy Officer at [LCJOffice@judiciaryni.uk](mailto:LCJOffice@judiciaryni.uk). You may also submit it in writing to: Judicial Data Privacy Officer, Lady Chief Justice's Office, Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF.

### **Receipt and Verification of Complaints**

Upon receipt your complaint will be referred to the Judicial Office Data Privacy Officer who, on behalf of the Judge, will:

- log receipt of the complaint and give it a case reference number;
- acknowledge receipt, indicating a timescale within which you will be given a substantive response;
- establish whether the complaint is a valid one, i.e., one that comes within the Judge's remit; and
- if necessary, seek further information from you to clarify the nature of the complaint or to verify your identity or your authority to complain on behalf of someone else.

### **Investigating and Responding to Complaints**

The Judicial Data Privacy Office aims to provide substantive responses within 30 days of receipt of a complaint. Where this is not possible, it will let you know and provide you with an estimate of the time within which you can expect to receive a substantive response.

The Judicial Data Privacy Officer will determine whether the Judge or another member of the LCJ's Office will investigate your complaint. Depending on the nature of the complaint, the Judicial Office Data Privacy Officer, who is authorised to act on behalf of the Judge, may decide the outcome of your complaint. Complex complaints will be referred to the Judge for investigation and decision.

The Judge has no direct powers to impose sanctions. If your complaint is upheld and raises matters of sufficient concern it will be referred to the Judicial Complaints Office. The judicial office holder complained about will be consulted before any referral is made. A copy of the substantive response to your complaint will be kept on file by the LCJ's Office for six years following the conclusion of the complaint.

## **Privacy Policy**

Your complaint and the response to it will be processed consistently with data protection law. Information on how the LCJ's Office, on behalf of the Judge, processes personal data concerning your complaint is contained in the Judicial Office's [Privacy Notice](#) or by writing to the Judicial Data Protection Privacy Officer at [LCJOffice@judiciaryni.uk](mailto:LCJOffice@judiciaryni.uk) or Judicial Data Privacy Officer, LCJ's Office, Royal Courts of Justice, Chichester Street, Belfast, BT1 3JF.