



LORD CHIEF JUSTICE
OF ENGLAND AND WALES



SENIOR PRESIDENT
OF TRIBUNALS

Judicial Data Protection Panel

Judicial Data Processing Complaints Handling Policy

April 2019

1. Introduction

The Judicial Data Protection Panel (Panel) was established in May 2018. This policy sets out the standards and procedures it will apply when dealing with complaints concerning the processing of personal data by the courts, tribunals and individuals acting in a judicial capacity.

The Panel is supported by the Judicial Office, an Office of the Ministry of Justice, and which is made up of civil servants who provide support to the Judiciary of England and Wales. The Judicial Office, and particularly the Judicial Office Data Privacy Officer, support the Panel in considering and responding to complaints submitted to the Panel.

2. Application

The Panel has jurisdiction to consider complaints concerning the following courts and tribunals

- the Court of Appeal in England and Wales;
- the High Court in England and Wales;
- the Crown Court;
- the Court of Protection;
- the Family Court;
- the County Court in England and Wales;
- Magistrates' courts;
- the Upper Tribunal;
- the First-tier Tribunal;
- the Employment Appeal Tribunal;
- the Employment Tribunal;
- Coroners' courts;
- Judge Advocates-General;
- the Investigatory Powers Tribunal.

It also has jurisdiction to deal with complaints concerning individuals acting in a judicial capacity in those courts and tribunals i.e., judges, Tribunal members, justices' clerks, members of Her Majesty's Courts and Tribunal Service authorised to exercise judicial functions.

3. Complaints that can be dealt with by the Panel

The Panel can deal with two types of complaints:

(i) **Complaints over which the Panel has exclusive jurisdiction**

There are two categories of complaint over which the Panel has exclusive jurisdiction. Exclusive jurisdiction refers to the fact that these categories of complaint are not capable of being referred to the Information Commissioner due to the limit placed on its supervisory powers provided by article 55(3) of the General Data Protection Regulation (GDPR) and section 117 of the Data Protection Act 2018 (DPA 2018).

- The **first category** of complaints are those concerning the processing of personal data by the following courts and tribunals when they are acting judicially: the Court of Appeal in England and Wales; the High Court in England and Wales; the Crown Court; the Court of Protection; the Family Court; the County Court in England and Wales; Magistrates' courts; the Upper Tribunal; the First-tier Tribunal; the Employment Appeal Tribunal; the Employment Tribunal; Coroners' courts; Judge Advocates-General the Investigatory Powers Tribunal.
- The **second category** of complaints are 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, tribunal or individual will be acting in a judicial capacity when they are, for instance, 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.

(ii) **Complaints over which the Panel does *not* have exclusive jurisdiction**

These are complaints concerning the processing of personal data by 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 Information Commissioner. The Panel would, however, seek to investigate and try to resolve any such

complaints before a formal complaint were to be raised with the Information Commissioner.

These complaints may arise following a refusal or rejection of a request by a data subject to exercise their rights in relation to personal data processed by a court, tribunal or a judge, tribunal member or individual. 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, tribunal 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).

4. Complaints that cannot be dealt with by the Panel

The Panel **cannot** deal with complaints concerning the Freedom of Information Act 2000. It also **cannot** deal with complaints concerning the processing of the personal data by courts or tribunals when they are not acting in a judicial capacity. If your complaint concerns these matters you should contact Her Majesty's Courts and Tribunals Service who may be able to consider your complaint. You may also contact the Information Commissioner 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 Information Commissioner's Office website <https://ico.org.uk/for-organisations/guide-to-data-protection>

5. Complaints that are not capable of rectification by the Panel

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

- The first are that a copy of personal data processed by a court, tribunal 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 GDPR. Such information is typically contained in judicial notes, notebooks, or electronic documents.
- The second are 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 GDPR.

The personal data processed in both situations will have been processed by a court, tribunal and judge acting in a judicial capacity. Parliament has decided that personal data processed in these situations is exempt from the right of access and the right of rectification provided for by the GDPR. The exemption is set out in article 23(1)(f) 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.

Accordingly, a court, tribunal or individual who 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 be under data protection law.

Where a complaint is made to the Panel 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.

6. What to do if you are unsure whether to raise your complaint with the Panel

If you are unsure whether a complaint should be referred to either the Panel or the Information Commissioner, you can contact either and they will be able to advise you.

7. 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, tribunal 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: Judicial Data Protection Panel at JODataPrivacyOfficer@judiciary.uk.

You may also submit it in writing to: Judicial Data Protection Panel, C/O Judicial Office Data Privacy Officer, Judicial Office, 11th floor Thomas More Building, Royal Courts of Justice, Strand London, WC2A 2LL.

8. Receipt and Verification of Complaints

Upon receipt your complaint will be referred to the Judicial Office Data Privacy Officer who, on behalf of the Panel, 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 Panel'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.

9. Investigating and Responding to Complaints

The Panel 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 time within which you can expect to receive a substantive response.

The Judicial Data Privacy Officer will determine whether they or another member of the Judicial 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 Panel, may decide the outcome of your complaint. Complex complaints will be referred to a member of the Panel for investigation and decision.

A copy of the substantive response to your complaint will be kept on file for the Panel by the Judicial Office for six years following the conclusion of the complaint.

10. Privacy Policy

Your complaint and the response to it will be processed consistently with the Judicial Office's Data Protection Policy and data protection law. Information on how the Judicial Office, on behalf of the Panel, processes personal data concerning your complaint is contained in the Judicial Office's Privacy Notice, which can be obtained from JODataPrivacyOfficer@judiciary.uk or by writing to: Judicial Data Protection Panel, C/O Judicial Office Data Privacy Officer, Judicial Office, 11th floor Thomas More Building, Royal Courts of Justice, Strand London, WC2A 2LL.