



JUDICIAL DATA PROTECTION PANEL

JUDICIAL DATA PROCESSING COMPLAINTS HANDLING POLICY

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 (MoJ), staffed by 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 (Courts and Tribunals in Scope)

- 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;
- Coroner's courts;
- Judge Advocates-General;
- the Investigatory Powers Tribunal

It also has jurisdiction to deal with complaints concerning individuals acting in a judicial capacity in the Courts and Tribunals in Scope i.e., judges, Tribunal members, jurors, justices' clerks and members of His Majesty's Courts and Tribunal Service (HMCTS) 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 categories of complaint over which the Panel 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 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 and Tribunals in Scope¹ when they are acting judicially.

¹ See 2 above.

- 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, tribunal 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.

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

These are complaints concerning the processing of personal data by individual judicial office holders (judges and tribunal members) when they are **not** acting in a judicial capacity. These complaints may be raised with the ICO. The Panel 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 that can be dealt with by the Panel 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, 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
- the processing of the personal data by courts or tribunals when they are not acting in a judicial capacity.

If your complaint concerns either of these matters you should contact HMCTS or the MoJ who may be able to consider your complaint. If these organisations have been unable to resolve your complaint you may then wish to 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>

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 is 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 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 the court, tribunal 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. Section 43(3) and (4) also restricts these rights in relation to personal data contained in a judicial decision or in other documents relating to proceedings which are created by or on behalf of a criminal court or other judicial authority.

Accordingly, a court, tribunal 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 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 ICO, you can email JODataPrivacyOfficer@judiciary.uk or the ICO 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 or 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;
- acknowledge receipt;
- 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 of the time within which you can expect to receive a substantive response.

The Judicial Office Data Privacy Officer will determine whether they or another member of the Judicial Office will investigate your complaint. Your complaint may need to be shared with Judicial Office or HMCTS staff to be properly investigated. 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.

The Panel has no direct powers to impose sanctions. If your complaint is upheld and raises matters of sufficient concern it will be referred to the Senior Presiding Judge or relevant Chamber President. The judicial office holder complained about will be consulted before any referral is made. The Panel's conclusions will in any event be passed to the Court, Tribunal or individual it concerns.

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 data protection law. We collect personal data to process your complaint directly from you and if necessary, from the court, tribunal or individual you have complained about. When we do this your complaint may be shared with staff from HMCTS and other organisations of the justice system. We may also need to collect your personal data from HMCTS and other organisations of the justice system to properly investigate your complaint. Our lawful basis under the UK GDPR for processing your personal data is that it is necessary for the performance of a task in the public interest. We will not process your personal data outside the UK unless necessary to investigate your complaint.

Unless subject to an exemption, in respect of your personal data that we process to investigate and respond to your complaint, you have the following rights:

Your right of access - You have the right to ask us for copies of your personal information.

Your right to rectification - You have the right to ask us to rectify personal information you think is inaccurate. You also have the right to ask us to complete information you think is incomplete.

Your right to erasure - You have the right to ask us to erase your personal information in certain circumstances.

Your right to restriction of processing - You have the right to ask us to restrict the processing of your personal information in certain circumstances.

Your right to object to processing - You have the the right to object to the processing of your personal information in certain circumstances.

If you make a request under one of these rights, we have one month to respond to you. Please contact us at: 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, if you wish to make a request.