



COMPLAINTS ABOUT THE JUDICIARY (SCOTLAND) RULES 2013/2015/2016

Report No 5

Basis of Report

This report covers the period of 1 April 2015 to 31 August 2016. For the purposes of this report we will only be considering valid complaints which were concluded within this period.

Taking account of the 13 complaints which were carried forward from the last reporting year (2014-2015), 147 complaints were concluded under the Rules during the period of this report.

The tables below provide a breakdown of the stage each complaint reached under the 2013, 2015 and 2016 Rules.

Complaints concluded under the 2013 Rules

Rule	Outcome	Senator / Temp Judge	Sheriff Principal/ Temp SP	Sheriff /PT Sheriff	JP/Stip	Total
6	Out of Time and not allowed to proceed	2	0	3	0	5
9	Dismissed by Judicial Office	0	0	1	0	1
10	Dismissed by Disciplinary Judge	2	1	3	0	6
11	Referred to Nominated Judge and resolved	0	0	0	0	0
12	Referred to Nominated Judge and not substantiated	0	0	0	1	1
15	Complaint Substantiated and report submitted to the Lord President	0	0	0	0	0
17	Withdrawn by complainer	0	0	0	0	0
19	JOH ceases to hold office	0	0	0	0	0
Total		4	1	7	1	<u>13</u>



Complaints concluded under the 2015 Rules

Rule	Outcome	Senator / Temp Judge	Sheriff Principal/ Temp SP	Sheriff /PT Sheriff	JP/Stip	Total
7	Out of Time and not allowed to proceed	3	0	0	0	3
8	Dismissed by Judicial Office	37	3	41	1	82
11	Dismissed by Disciplinary Judge	0	0	10	0	10
12	Referred to Nominated Judge and resolved	0	0	1	0	1
13	Referred to Nominated Judge and not substantiated	2	0	1	0	3
16	Complaint Substantiated and report submitted to the Lord President	0	0	1	1	2
18	Withdrawn by complainer	0	0	3	0	3
20	JOH ceases to hold office	0	0	0	0	0
Total		42	3	57	2	<u>104</u>



Complaints concluded under the 2016 Rules

Rule	Outcome	Senator / Temp Judge	Sheriff Principal/ Temp SP	Sheriff /PT Sheriff	Summary Sheriff/ PT Summary Sheriff	JP	Total
7	Out of Time and not allowed to proceed	0	0	0	0	0	0
8	Dismissed by Judicial Office	12	0	12	0	0	24
11	Dismissed by Disciplinary Judge	0	0	4	0	0	4
12	Referred to Nominated Judge and resolved	0	0	0	0	0	0
13	Referred to Nominated Judge and not substantiated	0	0	0	0	0	0
16	Complaint Substantiated and report submitted to the Lord President	0	0	0	0	0	0
18	Withdrawn by complainer	1	0	0	0	0	1
20	JOH ceases to hold office	0	0	1	0	0	1
Total		13	0	17	0	0	<u>30</u>

Out of time and not allowed to proceed

2013 Rules - Rule 6: The Judicial Office for Scotland (JOS) concluded five complaints that were considered out of time. In four complaints, the complainer provided a case for exceptional circumstances. These were placed before the disciplinary judge in accordance with the Rules. The disciplinary judge concluded that exceptional circumstances did not exist in all four cases. One complaint was dismissed following failure to submit a case for exceptional circumstances.

2015 Rules - Rule 7: The JOS concluded three complaints that were considered out of time and did not fall to be considered under Rule 7(6).¹ In these three complaints, the complainer provided a

¹ * *Where the Judicial Office considers that the allegation falls to be dismissed under Rule 8(3), it may decide not to invite representations under Rule 7(3) and proceed directly to deal with the matter under Rule 8.*



case for exceptional circumstances. These were placed before the disciplinary judge in accordance with the Rules. The disciplinary judge concluded that exceptional circumstances did not exist in all three cases and the complaints were not allowed to proceed. The JOS received six complaints that were out of time and fell to be considered under Rule 7(6). These six complaints were subsequently dismissed under Rule 8.

2016 Rules - Rule 7: No complaints were concluded under Rule 7 of the 2016 Rules.

Dismissed by Judicial Office

2013 Rules - Rule 9: The JOS concluded one complaint under Rule 9(4)(b) as the complaint related to a judicial decision.

2015 Rules - Rule 8: The JOS concluded eighty-two complaints under this Rule.

- Two complaints were dismissed under Rule 8(4)(a) – *it does not contain sufficient information to enable a proper understanding of the allegation to be achieved*. In both cases the complainer was given an opportunity to provide further information. No, further information was provided and the complaint remained dismissed under Rule 8(4)(a).
- Seventy-nine complaints were dismissed under Rule 8(4)(b) – *it is about a judicial decision*.
- One complaint was dismissed under Rule 8(4)(c) - *it raised a matter which has already been dealt with and does not present any material new evidence*.

2016 Rules – Rule 8: The JOS concluded twenty-four complaints under this rule.

- One complaint was dismissed under Rule 8(4)(a) – *it does not contain sufficient information to enable a proper understanding of the allegation to be achieved*. The complainer was given an opportunity to provide further information. No, further information was provided and the complaint remained dismissed under Rule 8(4)(a).
- Twenty-three complaints were dismissed under Rule 8(4)(b) - *it is about a judicial decision*.

Dismissed by Disciplinary Judge

2013 Rules - Rule 10: The JOS concluded six complaints under this rule.

- Three complaints were dismissed by the Disciplinary Judge under Rule 10(4)(b) - *it is about a judicial decision / judicial case management/ judicial management of court programming*.
- Two complaints were dismissed by Disciplinary Judge under Rule 10(4)(f) - *it is without substance*.
- One complaint was dismissed by the Disciplinary Judge under Rule 10(4)(g) - *it is insubstantial, that is to say that even if substantiated, it would not require any disciplinary action to be taken*.



2015 Rules - Rule 11: The JOS concluded ten complaints under this rule.

- Five complaints were dismissed by the Disciplinary Judge under Rule 11(4)(b) – *it is about a judicial decision.*
- Five complaints were dismissed by the Disciplinary Judge under Rule 11(4)(f) and/or (g) –
(f) it is without substance;
(g) it is insubstantial, that is to say that even if substantiated, it would not require any disciplinary action to be taken.

2016 Rules – Rule 11: The JOS concluded four complaints under this rule.

- Three complaints were dismissed by the Disciplinary Judge under Rule 11(4)(g) - *it is insubstantial, that is to say that even if substantiated, it would not require any disciplinary action to be taken.*
- One complaint was dismissed by the Disciplinary Judge under Rule 11(4)(b) - *it is about a judicial decision.*

Referred to Nominated Judge

2013 Rules - Rules 11 & 12: One complaint was concluded after referral to the nominated judge for investigation under the 2013 Rules. This complaint was not substantiated. The Lord President agreed with the findings and recommendation.

2015 Rules - Rules 12, 13 & 16: Six complaints were concluded after referral to a nominated judge for investigation under the 2015 Rules. A nominated judge was able to resolve one complaint to the satisfaction of the complainer and the judicial office holder without further investigation. Nominated judges found three complaints were not substantiated – the Lord President agreed with the findings and the recommendations in each case. Two complaints were found to be substantiated by nominated judges. As a result a sheriff and a Justice of the Peace were issued with a reprimand by virtue of the powers conferred on the Lord President under section 29 of the Judiciary and Courts (Scotland) Act 2008.

2016 Rules – Rules 12, 13 & 16: No complaints are yet concluded under 2016 rules after referral to a nominated judge.

Withdrawn by Complainer

2013 Rules - Rule 17: No complaints were withdrawn under the 2013 Rules.

2015 Rules - Rule 18: Three complaints were deemed to be withdrawn by the complainer under the 2015 Rules, as all three complainers failed to respond to correspondence from the JOS within 28 days.



2016 Rules – Rule 18: One complaint was deemed to be withdrawn by the complainer under the 2016 Rules, as the complainer failed to respond to correspondence from the JOS within 28 days.

Outstanding Complaints

As of 1 September 2016, sixteen complaints were still active: four complaints are currently under consideration; six are suspended pending on-going judicial proceedings and six are under investigation.

A copy of the Rules and associated guidance can be found on our website: <http://www.scotland-judiciary.org.uk/15/0/Complaints>