



## COMPLAINTS ABOUT THE JUDICIARY (SCOTLAND) RULES 2011

### Report No 2

This report covers the period 1 April 2012 to 31 March 2013.

Only complaints which are validly made under the Complaints about the Judiciary (Scotland) Rules (the Rules) are reported here. The Judicial Office occasionally received correspondence which contained some complaint elements. In such circumstances the Judicial Office invited the correspondent to provide the elements of a valid complaint document, as set out in Rule 5(2):

A “complaint document” is a document in writing which—

- (a) is legible;
- (b) contains an allegation of misconduct on the part of a named or identifiable judicial officeholder; and
- (c) states the name, address and telephone number of the person who is making the complaint.

If the correspondent provided this information, then the correspondence was treated as a valid complaint, was considered and has been included in these statistics.

#### **Complaints received**

During the period 1 April 2012 to 31 March 2013, the Judicial Office received **114** complaints from **62** separate complainers under the Rules. As each complaint can have a different outcome, complaints are counted per judicial office holder complained about, even if these complaints were sent in the same letter.

#### **Complaints concluded**

There were nine complaints in process when the last statistics report covering the period 28 February 2011 to 31 March 2012 was drawn up. These complaints are included in the complaint outcome tables in this report.

On 31 March 2013, three complaints were still under consideration (the pre-investigation stage) and four were still under investigation. So taking account of the nine complaints from the last reporting period, there are **116** complaints which were concluded under the Rules during the period of this report.

## Number of complaints received about different types of Judicial Office Holder

Some judicial office holders changed role between the incident that the complainer complained about and the complaint being received. As far as possible, the judicial office held at the time the incident complained of occurred is shown here.

Table 1

Senator or Temporary Judge	38
Sheriff Principal/Temporary Sheriff Principal	9
Sheriff/Part time Sheriff	62
Justice of the Peace/Stipendiary Magistrate	5
<b>Total</b>	<b>114</b>

In addition the outcome of one complaint referred to the Lord President by the Judicial Complaints Reviewer in terms of s30 of the Judiciary and Courts (Scotland) Act 2008 has been included below.

## Outcomes of complaints

The primary outcome is shown in table 2 below. Some complaints had allegations which fell into more than one category. These are shown later in this report in the tables which breakdown the outcomes further.

Table 2

out of time (Rule 6)	24
withdrawn by complainer at consideration stage	3
about a judicial decision or judicial case management or judicial management of court programming. Rule 9 (4) (b) or Rule 10 (4) (b)	53
raises a matter which has already been dealt with. Rule 9 (4) (c) -	18
raises a matter for the Judicial Complaints Reviewer Rule 9 (4) (d)	2
without substance Rule 10 (4) (f)	8
insubstantial Rule 10 (4) (g)	1
Investigated by a nominated judge – withdrawn by complainer Rule 17 (4)	1
Investigated by a nominated judge – resolved to satisfaction of complainer Rule 11 (6)	2
Investigated by a nominated judge – report submitted to the Lord President Rule 15 (2)	4
<b>Total</b>	<b>116</b>

### **Time Limit - Rule 6**

Table 3 shows the number of complaints dismissed by the Judicial Office because the complaint related to conduct or events occurring more than 3 months before the date on which the complaint was received. This table includes those dismissed after a case for exceptional circumstances was considered by the disciplinary judge.

Table 3

Senator or Temporary Judge	5
Sheriff Principal/Temporary Sheriff Principal	1
Sheriff/Part-time Sheriff	17
Justice of the Peace/Stipendiary Magistrate	1
Total	<b>24</b>

If the complaint is about something which occurred more than three months before the complaint is received, the complainer can make a case that exceptional circumstances are present that mean the complaint should be considered out of time. If the complainer makes a case for exceptional circumstances it is passed to the disciplinary judge, who considers whether the allegation can proceed. Some complainers do not ask for their case for exceptional circumstances to be considered, even when they are invited to do so by the Judicial Office. Table 4 shows the number of exceptional circumstance cases presented by complainers:

Table 4

Senator or Temporary Judge	5
Sheriff Principal/Temporary Sheriff Principal	0
Sheriff/Part-time Sheriff	13
Justice of the Peace/Stipendiary Magistrate	1
Total	<b>19</b>

These nineteen complaints were put before the disciplinary judge who decided that all but one should not be allowed to proceed. In the one case where exceptional circumstances were shown, the complaint was considered and dismissed by the disciplinary judge as being without substance; falling within Rule 10 (4) (f).

### **Initial assessment of complaint by Judicial Office - Rule 9 (3)**

There were no complaints dismissed by the Judicial Office where the primary reason was that they fell within Rule 9 (4) (a) – *does not contain sufficient information to enable a proper understanding of the allegation to be achieved*

Table 5 shows the number of complaints dismissed by the Judicial Office where the primary reason was that they fell within Rule 9 (4) (b) - *it is about a judicial decision or judicial case management or judicial management of court programming.*

Table 5

Senator or Temporary Judge	25
Sheriff Principal/Temporary Sheriff Principal	2
Sheriff/Part-time Sheriff	15
Justice of the Peace/Stipendiary Magistrate	1
Total	<b>43*</b>

\*of these 43 cases two were also dismissed under Rule 9 (4) (c) - *it raises a matter which has already been dealt with (whether under these Rules or otherwise), and does not present any material new evidence.*

Table 6 shows the number of allegations dismissed by the Judicial Office where the primary reason was that they fell within Rule 9 (4) (c) - *it raises a matter which has already been dealt with (whether under these Rules or otherwise), and does not present any material new evidence.*

Table 6

Senator or Temporary Judge	2
Sheriff Principal/Temporary Sheriff Principal	5
Sheriff/Part-time Sheriff	11
Total	<b>18*</b>

\*of these 18 complaints one was also dismissed under Rule 9 (4) (d) – *it raises a matter which falls within the functions of the Judicial Complaints Reviewer.*

There were two cases where the primary reason was that the allegation fell within Rule 9 (4) (d). As the numbers are so low for this category a separate table is not given.

### Allegations related to on-going proceedings

Table 7 shows the number of complaints referred to the disciplinary judge because it appeared to the Judicial Office that the allegation related to judicial proceedings which were not concluded. This is done to get advice as to whether it would be appropriate for consideration under the Rules to continue before the judicial proceedings are concluded – Rule 9 (6)

Table 7

Senator or Temporary Judge	1
Sheriff Principal/Temporary Sheriff Principal	0
Sheriff/Part-time Sheriff	9
Justice of the Peace/Stipendiary Magistrate	3
Total	13

The disciplinary judge agreed that it would be appropriate for these 13 complaints to be considered under these Rules before the judicial proceedings were concluded. The disciplinary judge then went on to consider the complaint in terms of Rule 10.

### Consideration by disciplinary judge – Rule 10

There were no complaints dismissed by the disciplinary judge as falling within rule 10(4) (a) (c) (d) or (e), these are:

- (a) it does not contain sufficient information to enable a proper understanding of the grounds of the allegation to be achieved;
- (c) it raises a matter which has already been dealt with (whether under these Rules or otherwise), and does not present any material new evidence;
- (d) it raises a matter which falls within the functions of the Judicial Complaints Reviewer;
- (e) it is vexatious;

Table 8 shows the number of allegations dismissed by disciplinary judge where the primary reason was that they fell within Rule 10 (4) (b) - *it is about a judicial decision or judicial case management or judicial management of court programming.*

Table 8

Senator or Temporary Judge	1
Sheriff Principal/Temporary Sheriff Principal	0
Sheriff/Part-time Sheriff	8
Justice of the Peace/Stipendiary Magistrate	1
Total	10*

\* Of these 10 complaints 5 were also dismissed as falling within Rule 10 (4) (f) – *it is without substance.* In addition, 1 of these 10 complaints was considered to fall within Rule 10 (4) (g) – *it is insubstantial.*

Table 9 shows the number of allegations dismissed by disciplinary judge where the primary reason was that they fell within Rule 10 (4) (f) – *it is without substance*

Table 9

Senator or Temporary Judge	1
Sheriff Principal/Temporary Sheriff Principal	1
Sheriff/Part-time Sheriff	2
Justice of the Peace/Stipendiary Magistrate	3
Total	7*

\*1 of these 7 complaints was considered to fall within Rule 10 (4) (g) – *it is insubstantial*.

There was one complaint where the primary reason was that it fell within Rule 10 (4) (g) – *it is insubstantial*.

### **Referral to a nominated judge**

Eleven complaints were referred to a nominated judge for investigation under Rule 11, 12 and 13. At 31 March 2013, four of these eleven investigations were still underway.

Of those investigations which were concluded within the reporting period, one complaint was withdrawn by the complainer; two were resolved to the satisfaction of the complainer; and four were the subject of a report to the Lord President.

All of these reports recommended that no action should be taken by the Lord President in respect of the judicial office holders concerned. However the conclusions of the reports were different. Three complaints were found after investigation by the nominated judge to be without substance or unsubstantiated and in one case, vexatious. The Lord President agreed that no action was required.

The remaining complaint investigation found the complaint to be substantiated. The complainer's version of events was not challenged by the judicial office holder and an apology was offered. The Lord President agreed that no further action was required.