



## COMPLAINTS ABOUT THE JUDICIARY (SCOTLAND) RULES 2011 and 2013

### Report No 3

This report covers the period 1 April 2013 to 31 March 2014. The 2013 Rules came into force 8 August 2013 and therefore the following report is about complaints received under both sets of Rules.

#### Background

The Lord President made rules for the investigation and determination of any matters concerning the conduct of judicial office holders; Complaints About the Judiciary (Scotland) Rules 2011. They came into force on 28 February 2011. After two years of administering the rules, several administrative issues had been noted and the Lord President directed that a review be undertaken.

During the review, a small error was discovered in Rule 15 – this was rectified and the amended rules took effect from 8 August 2013, titled “Complaints About the Judiciary (Scotland) Rules 2013”. Under the 2011 rules reference was made to “the power” at 15(3)(c) and 15(7). The 2013 rules have been amended to use the term ‘a power’ at section 15(3)(c) and 15(7) in order to retain the discretion afforded the Lord President as to which of the three powers in section 29(1) of the Judiciary and Courts (Scotland) Act 2008 he wishes to use.

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 2013 to 31 December 2013, the Judicial Office received **92** complaints from **63** 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.

### **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. **Table 1** below details the judicial office held at the time the incident complained of is alleged to have occurred.

**Table 1**

Senator or Temporary Judge	34
Sheriff Principal/Temporary Sheriff Principal	4
Sheriff/Part time Sheriff	52
Justice of the Peace/Stipendiary Magistrate	2
<b>Total</b>	<b>92</b>

### **Complaints concluded**

There were seven complaints in process when the last statistics report, covering the period 1 April 2012 to 31 March 2013, was drawn up. These complaints have concluded and are included in the complaint outcome figures in this report.

On 31 March 2014, 13 complaints were active: seven still under consideration (the pre-investigation stage); four still under investigation and two suspended pending ongoing judicial proceedings. Taking account of the seven complaints from the last reporting period, 85 complaints were concluded under the Rules during the period of this report.

Of the 85 complaints concluded during the period of this report, one complaint was referred to the Lord President by the Judicial Complaints Reviewer in terms of s30 of the Judiciary and Courts (Scotland) Act 2008.

## **Outcomes of complaints**

The primary outcome of complaints concluded between 1 April 2013 and 31 March 2014 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)	21
Withdrawn by complainer at consideration stage	6
Contains insufficient information 9 (4) (a)	4
About a judicial decision or judicial case management or judicial management of court programming. Rule 9 (4) (b) or Rule 10 (4) (b)	32
Raises a matter which has already been dealt with. Rule 9 (4) (c) -	1
Raises a matter for the Judicial Complaints Reviewer Rule 9 (4) (d)	0
Without substance Rule 10 (4) (f)	3
Insubstantial Rule 10 (4) (g)	8
Investigated by a nominated judge – withdrawn by complainer Rule 17 (4)	2
Investigated by a nominated judge – resolved to satisfaction of complainer Rule 11 (6)	4
Investigated by a nominated judge – report submitted to the Lord President Rule 15 (2)	4
<b>Total</b>	<b>85</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 three months before the date on which the complaint was received. When a complaint is out of time, the complainer is invited to submit a case that exceptional circumstances exist which would justify allowing the complaint to proceed out of time.

**Table 3**

Senator or Temporary Judge	11
Sheriff Principal/Temporary Sheriff Principal	2
Sheriff/Part-time Sheriff	7
Justice of the Peace/Stipendiary Magistrate	1
<b>Total</b>	<b>21</b>

In 20 of 21 complaints reported here, the complainer provided a case that exceptional circumstances existed. This was put before the disciplinary judge to decide if consideration of the allegation could proceed. The disciplinary judge decided in all 20 cases that exceptional circumstances had not been demonstrated and so the complaints were not allowed to proceed. In the remaining complaint, the complainant did not make a case that exceptional circumstances existed and so the

Judicial Office advised the complainer that their complaint could not proceed in terms of Rule 6.

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

Four complaints were 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 4** 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 4**

Senator or Temporary Judge		10	
Sheriff Principal/Temporary Sheriff Principal		0	
Sheriff/Part-time Sheriff		13	
Justice of the Peace/Stipendiary Magistrate		0	
Total		<b>23</b>	

There was one case where the primary reason was that the allegation 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.*

### **Allegations related to on-going proceedings**

The Judicial Office referred nine complaints to the disciplinary judge because it appeared 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).

The disciplinary judge agreed that it would be appropriate for eight of the nine 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, which are included in the outcomes below. The remaining complaint was suspended pending conclusion of the judicial proceedings and that complaint was still suspended as at 31 March 2014.

### **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;

Three allegations were dismissed by disciplinary judge where the primary reason was that they fell within Rule 10 (4) (f) – *it is without substance*

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

**Table 5** 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 5**

Senator or Temporary Judge	0
Sheriff Principal/Temporary Sheriff Principal	0
Sheriff/Part-time Sheriff	9
Justice of the Peace/Stipendiary Magistrate	0
Total	<b>9*</b>

\* Of these 9 complaints 4 were also dismissed as falling within Rule 10 (4) (f) – *it is without substance* and 2 as falling within within Rule 10 (4) (g) – *it is insubstantial*.

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

Thirteen complaints were referred to a nominated judge for investigation under Rule 11, 12 and 13 between 1 April 2013 and 31 March 2014. At 31 March 2014, four of these thirteen investigations were still underway.

Of those investigations which were concluded within the reporting period, including one that was received during the last reporting period 2012-2013: two complaints were withdrawn by the complainer; four were resolved to the satisfaction of the complainer; and four were the subject of a report to the Lord President.

Three reports to the Lord President indicated that the allegations were found to be without substance or unsubstantiated following investigation. The Lord President agreed with the findings and recommendations in the reports.

The remaining complaint investigation found the complaint to be substantiated. The nominated judge recommended that the conduct did not require formal action in relation to S29 of the Judiciary and Courts (Scotland) Act 2008 by the Lord President,

because the complaint procedure had been sufficient in that regard. The Lord President agreed that no further action was required.