



The Lord President

Parliament House
Edinburgh, EH1 1RQ

1 April 2015

Mr David Stewart
Convenor
Public Petitions Committee
Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

Dear Mr Stewart,

Complaints About the Judiciary (Scotland) Rules 2015

I am pleased to inform you that we have today published the new Complaints About the Judiciary (Scotland) Rules 2015 and associated guidance. As you know, the new Rules and guidance were developed following a consultation on the Rules. I also enclose my official response to the consultation and associated documents.

The new Rules and guidance for complainers simplify and streamline the process for dealing with complaints and make clear the matters that can properly be investigated.

The Right Honourable Lord Gill

COMPLAINTS ABOUT THE JUDICIARY (SCOTLAND) RULES 2015

Made - - - -

30 March 2015

Coming into force - -

01 April 2015

The Lord President of the Court of Session, in exercise of his powers under section 28 of the Judiciary and Courts (Scotland) Act 2008 (asp 6), makes the following Rules.

Citation and commencement

1. These Rules may be cited as the Complaints about the Judiciary (Scotland) Rules 2015 and come into force on 01 April 2015.

Application

2. These Rules apply in relation to complaints about the conduct of the following judicial office holders:—

- (a) judges of the Court of Session;
- (b) re-employed retired judges of the Court of Session;
- (c) the Chairman of the Scottish Land Court;
- (d) temporary judges of the Court of Session;
- (e) sheriffs principal;
- (f) temporary sheriffs principal;
- (g) sheriffs;
- (h) re-employed retired sheriffs principal and sheriffs;
- (i) part-time sheriffs;
- (j) stipendiary magistrates;
- (k) justices of the peace.

Disciplinary judge

3.—(1) The Lord President is to appoint a judge of the Inner House of the Court of Session (to be known as “the disciplinary judge”) for the purposes of—

- (a) supervising the operation generally of these Rules and reporting to the Lord President about that matter as appropriate; and
- (b) carrying out the other functions specified by these Rules.

(2) Paragraph (3) applies to a complaint made under these Rules—

- (a) alleging misconduct on the part of the judge who is the disciplinary judge; or
- (b) where the disciplinary judge considers it to be inappropriate for him or her to carry out the functions mentioned in paragraph (1)(b) in relation to the complaint.

(3) The functions mentioned in paragraph (1)(b) are in relation to that allegation to be carried out by another judge of the Inner House of the Court of Session nominated by the Lord President.

Judicial Office

4.—(1) References in these Rules to the Judicial Office are to the Judicial Office established by the Scottish Courts and Tribunals Service to support the Lord President in the Lord President's non-judicial functions.

(2) Where under these Rules a function is to be carried out by the Judicial Office, the function is to be carried out by the most senior member of its staff or such other member of staff as may be authorised (whether specifically or generally) by the most senior member.

Making a complaint

5.—(1) A complaint may be made by submitting a complaint document to the Judicial Office.

(2) A "complaint document" is a document in writing which —

- (a) is legible;
- (b) contains a detailed allegation of misconduct on the part of a named or identifiable judicial office holder;
- (c) gives the date or dates of the alleged misconduct; and
- (d) states the name of the person who is making the complaint and details of an address to which correspondence may be sent.

(3) A complaint document is to be accompanied by all documents within the control of the person complaining upon which the person seeks to rely in making the allegation.

(4) For the purposes of this rule—

- (a) a document may be sent by any method which the Judicial Office has indicated to be an acceptable means of sending it;
- (b) if sent by an electronic means indicated to be acceptable a document is to be treated as valid only if it is capable of being used for subsequent reference.

(5) A complaint will not be accepted where the complaint document (or any communication associated with it) indicates that the person complaining does not want the judicial office holder against whom the complaint is made to see a copy of the complaint document or any document accompanying it.

Allegations of criminal conduct

6.—(1) This rule applies to a complaint made under rule 5.

(2) If it appears to the Judicial Office that the allegation is of an act or omission which may constitute a criminal offence—

- (a) further consideration under these Rules shall be suspended until—
 - (i) the relevant prosecutor indicates that no criminal proceedings are to be taken; or
 - (ii) any such proceedings have been concluded; and
- (b) the Judicial Office is to write to the person complaining to that effect.

Time limit

7.—(1) Subject to this rule, the Judicial Office is to dismiss any allegation of misconduct in a complaint document which founds on anything occurring more than 3 months before the date on which the complaint was received.

(2) The person complaining may make a case in writing to the Judicial Office that there are exceptional circumstances which justify allowing the allegation to proceed.

(3) Where such a case is not made at the time of making the complaint, the Judicial Office is to write to the person inviting him or her, by such date as is specified, to make such a case.

(4) Where such a case is made, the disciplinary judge is to decide whether the allegation is to be allowed to proceed.

(5) Where an allegation is dismissed under this rule the Judicial Office is to write to the person complaining to that effect.

(6) Where the Judicial Office considers that the allegation falls to be dismissed under rule 8(3), it may decide not to invite representations under paragraph (3) above and proceed directly to deal with the matter under rule 8.

Initial assessment of complaint

8.—(1) This rule applies to an allegation which is not currently suspended under rule 6 and has not been dismissed under rule 7.

(2) The Judicial Office is to carry out an initial assessment of the allegation.

(3) If the Judicial Office considers that the allegation falls into paragraph (4), it is to dismiss the allegation.

(4) An allegation falls into this paragraph if —

- (a) it does not contain sufficient information to enable a proper understanding of the allegation to be achieved;
- (b) it is about a judicial decision;
- (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.

(5) Where a complaint is dismissed under paragraph (3), the Judicial Office is to provide written reasons to the persons complaining to that effect.

(6) Where an allegation is not dismissed under paragraph (3), the Judicial Office is to write to the person complaining to inform them of that fact and of the next step under these Rules.

Notification of judicial office holder

9.—(1) This rule applies to an allegation whose consideration is not currently suspended under rule 6 and which has not been dismissed under rule 7 or 8.

(2) The Judicial Office is to send to the judicial office holder concerned—

- (a) a document (which may be the complaint document) containing the allegation;
- (b) all information about the allegation which is in or accompanied the complaint document;
- (c) an indication of the next step to be followed under these Rules.

Ongoing proceedings

10.—(1) This rule applies where an allegation has been sent to the Judicial Office holder under rule 9.

(2) If it appears to the Judicial Office that the allegation relates to judicial proceedings which are not concluded, it is to refer the allegation to the disciplinary judge for advice as to whether it would be appropriate for consideration under these Rules to continue before the judicial proceedings are concluded.

(3) Where the disciplinary judge advises that it would be inappropriate for that to occur—

- (a) no further action is to be taken under these Rules until the proceedings have been concluded; and
- (b) the Judicial Office is to write to the person complaining and to the judicial office holder concerned to that effect.

Consideration by disciplinary judge

11.—(1) This rule applies to an allegation —

- (a) which is not dismissed under rule 8; and
- (b) whose consideration is not currently suspended under rule 10.

(2) The allegation is to be considered by the disciplinary judge in accordance with the following paragraphs.

(3) If the disciplinary judge is of the view that the allegation falls into paragraph (4), he or she is to dismiss the allegation and is to inform the Judicial Office accordingly.

(4) An allegation falls into this paragraph if —

- (a) it does not contain sufficient information to enable a proper understanding of the grounds of the allegation to be achieved;
- (b) it is about a judicial decision;
- (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;
- (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.

(5) In forming his or her view as to whether paragraph (4)(f) or (g) applies, the disciplinary judge is to take due account of the extent to which the conduct concerned complies with any guidance relating to the conduct of judicial office holders issued by the Lord President under section 2(2)(d) of the 2008 Act which is relevant.

(6) Where a complaint is dismissed under paragraph (3), the Judicial Office is to write to the person complaining and the judicial office holder concerned to that effect.

(7) If the disciplinary judge is of the view that one or more allegations in a complaint fall outside paragraph (4), he or she is to go on to consider whether paragraph (8) applies and is to inform the Judicial Office accordingly.

(8) This paragraph applies where the disciplinary judge thinks that the allegation, if substantiated, would raise a possible question of fitness for office.

(9) Where the Judicial Office is informed that paragraph (8) applies, it is to inform the Lord President; and further consideration under these Rules is suspended until the Lord President indicates whether he or she intends to request the establishment of a tribunal to consider fitness for office of the judicial office holder.

(10) In the event that the Lord President indicates an intention to make such a request, consideration under these Rules is to cease; and the Judicial Office is to write to the person complaining and to the judicial office holder concerned to that effect.

Referral to a nominated judge

12.—(1) This rule applies to an allegation—

- (a) which is not dismissed under rule 11; and
- (b) whose consideration is not currently suspended under that rule.

(2) The Judicial Office is to refer the allegation to a judicial office holder nominated by the disciplinary judge.

(3) Subject to paragraph (4), the nominated judge is to be either a judge of the Court of Session or a sheriff principal.

(4) In the case of an allegation falling within paragraph (5), the nominated judge is to be a judge of the Court of Session.

- (5) An allegation falls within this paragraph if it is against—
- (a) a judge of the Court of Session;
 - (b) a re-employed retired judge of the Court of Session;
 - (c) the Chairman of the Scottish Land Court;
 - (d) a temporary judge of the Court of Session and concerns the carrying out of a function of that appointment;
 - (e) a sheriff principal.

(6) Where at any stage of consideration under these Rules the nominated judge thinks that the matter may be capable of resolution to the satisfaction of the person complaining and the judicial office holder concerned without further investigation, he or she may communicate with both parties as he or she thinks fit with a view to securing that outcome.

(7) Where that outcome is achieved, the nominated judge is to write to the Judicial Office to that effect and consideration under these Rules is to cease.

Investigation and report

13.—(1) This rule applies to an allegation referred to a nominated judge which has on initial consideration been incapable of resolution under rule 12(6).

- (2) The nominated judge is to investigate the allegation and determine—
- (a) the facts of the matter;
 - (b) whether the allegation is substantiated (or substantiated in part); and if so, to recommend whether the Lord President should exercise a power mentioned in section 29(1) of the 2008 Act or take other action.
- (3) The report of the nominated judge is to—
- (a) be in writing;
 - (b) contain reasons for its conclusions;
 - (c) be submitted to the Judicial Office.

(4) In deciding whether an allegation is to any extent substantiated and in making any recommendation in consequence the nominated judge is to take due account of the extent to which the conduct concerned complies with any guidance relating to the conduct of judicial office holders issued by the Lord President under section 2(2)(d) of the 2008 Act which is relevant.

Procedure and conduct of investigation

- 14.**—(1) For the purposes of the investigation the nominated judge may —
- (a) make such inquiries into the allegation as he or she considers appropriate;
 - (b) obtain and consider any documents which appear to be relevant;
 - (c) interview any persons he or she considers appropriate.
- (2) The nominated judge is to—
- (a) give an interviewee reasonable notice of the date and time of the interview;
 - (b) permit an interviewee to be accompanied by a person of his or her choosing for the doing of such of the following for the interviewee as the interviewee requires —
 - (i) providing moral support;
 - (ii) helping to manage papers;
 - (iii) taking notes;
 - (iv) offering advice.
- (3) The nominated judge may arrange for any interview to be recorded, either by way of taking contemporaneous notes or by equipment which records sound digitally on an appropriate storage medium.

(4) The judicial office holder concerned is to comply with a request from the nominated judge that he or she be interviewed.

(5) The procedure and conduct of an investigation is such (consistent with respecting the principles of fairness and natural justice) as the nominated judge thinks fit; but —

- (a) the judicial office holder concerned is to be afforded the opportunity to submit a written response to the allegation;
- (b) the person complaining and the judicial office holder are each to be afforded the opportunity to submit written comments on any information obtained by the nominated judge which he or she has not previously seen;
- (c) so far as the determination of questions of fact is concerned—
 - (i) the investigation is to be conducted with the aim of ascertaining, so far as reasonably possible, the truth;
 - (ii) findings of fact are to be made on the balance of probabilities;
- (d) so far as possible, the investigation is to be conducted without disclosure to third parties of the identity of the person complaining or the judicial office holder concerned.

(6) Before the investigation starts the nominated judge is to prepare and issue to the person complaining and the judicial office holder concerned a statement of the procedure he or she has decided on.

(7) Where, after the investigation starts, the nominated judge wishes to depart from that procedure in a material way, he or she is to inform the person complaining and the judicial office holder concerned in writing before proceeding.

(8) The nominated judge is to make a note of the substance of all conversations in the course of the investigation which are material to it and is to create and maintain a file containing—

- (a) those notes;
- (b) all documents relevant to the investigation; and
- (c) all recordings of interviews carried out in the course of the investigation.

(9) For the purpose of these Rules, notes taken by the nominated judge under paragraph (3) are deemed to be an accurate record of any interview where the interviewee has signed a copy of the notes to this effect.

(10) After submitting his or her report, the nominated judge is to send the file to the Judicial Office.

Review by disciplinary judge

15.—(1) This rule applies where the Judicial Office has received a report under rule 13.

(2) The report shall be put before the disciplinary judge, together with the nominated judge's file.

(3) The disciplinary judge is then to review the determinations in the report.

(4) Having reviewed the determinations, the disciplinary judge may require that the nominated judge reconsiders any of them.

(5) Such a requirement is to be in writing and a copy is to be sent to the Judicial Office.

(6) For the purposes of reconsidering a determination, the nominated judge may—

- (a) make such further inquiries into the allegation as he or she considers appropriate;
- (b) obtain and consider any further documents which appear to be relevant;
- (c) interview (or re-interview) any persons he or she considers appropriate.

(7) Rules 14(2), (3) and (9) apply to an interview under paragraph (6)(c) as they apply to an interview conducted under rule 14(1)(c).

(8) The nominated judge is to make a note of the substance of all conversations in the course of reconsideration of a determination which are material to it and is to update the nominated judge's file with—

- (a) those notes;
- (b) all additional documents relevant to the reconsideration;
- (c) all recordings of interviews carried out in the course of the reconsideration.

(9) Having carried out all reconsiderations required by the disciplinary judge, the nominated judge is to resubmit his or her report.

(10) In relation to any determination which the nominated judge was required to reconsider the report is to contain statements of—

- (a) what the nominated judge did in reconsidering the determination;
- (b) what the outcome of the reconsideration was.

Report to the Lord President

16.—(1) Paragraph (2) applies where the Judicial Office has—

- (a) received a report under rule 13 and the disciplinary judge has indicated that he or she is not requiring that the nominated judge reviews any determination under rule 15; or
- (b) received a report under rule 15.

(2) The Judicial Office is to put the report before the Lord President.

(3) Paragraph (4) applies where—

- (a) the report finds the allegation to be substantiated (or substantiated in part);
- (b) the report recommends that the Lord President should exercise a power mentioned in section 29(1) of the 2008 Act; and
- (c) the Lord President proposes to exercise a power mentioned in that section.

(4) The Lord President is to write to the judicial office holder who is the subject of the report inviting him or her to make written representations.

(5) The Lord President's letter is to contain or be accompanied by such information (including where appropriate the report) as he or she considers to be appropriate for the purpose of giving the judicial office holder a fair opportunity to make any representations.

(6) The judicial office holder who is the subject of the report is to make any representations by such date as is specified in the invitation.

(7) The Lord President is to consider any representations before deciding whether to exercise a power.

Notification of outcome, etc.

17.—(1) This rule applies where—

- (a) the Lord President has received a report under rule 16(2); and
- (b) the Lord President has taken all action (if any) which he or she proposes to take in consequence.

(2) The Judicial Office is to write to the person complaining to inform the person of—

- (a) the outcome of the investigation of the complaint; and
- (b) of the action (if any) taken by the Lord President in consequence.

(3) The Judicial Office's letter is to contain or be accompanied by such information as the Lord President considers to be appropriate for the purpose of giving the person complaining a fair understanding of the matters mentioned in paragraphs (2)(a) and (b).

(4) Except where the Lord President has already done so in pursuance of rule 16, he or she is to write to the judicial office holder who is the subject of the report to inform him or her of the matters mentioned in paragraphs (2)(a) and (b).

(5) After paragraphs (2) and (4) have been complied with the Lord President may publish or disclose to any person such information concerning the whole matter (including the identity of the person complaining or the judicial office holder who is the subject of the report or both) as he or she considers to be appropriate.

Withdrawal of complaint

18.—(1) A person complaining may by writing to the Judicial Office to that effect, withdraw the complaint at any time before the Lord President has received a report about it under rule 16(2).

(2) Where a person complaining fails to respond to correspondence from the Judicial Office or the nominated judge within 28 days, the complaint may be deemed to have been withdrawn and may be treated in accordance with this rule.

(3) Where a complaint is withdrawn before it is referred to a nominated judge under rule 12, the disciplinary judge is to consider whether further consideration of an allegation of misconduct in it is appropriate.

(4) If so, the allegation is to continue to be considered under these Rules as if the complaint had not been withdrawn.

(5) Where a complaint is withdrawn after it is referred to a nominated judge under rule 12, the nominated judge is to consider whether further investigation of an allegation of misconduct in it is appropriate.

(6) If so, the allegation is to continue to be investigated under these Rules as if the complaint had not been withdrawn.

(7) Where an allegation is continuing to be investigated by virtue of paragraph (4) or (6), any requirement in the Rules or in the statement of the procedure decided on under rule 14(6) to communicate a matter to or to seek comments from the person complaining ceases to apply.

Consideration of matters in absence of a complaint

19.—(1) Paragraph (2) applies where no complaint is made under these Rules but the disciplinary judge receives information from any source which suggests to him or her that consideration under these Rules of a possible allegation of misconduct is appropriate.

(2) The allegation is to be considered under these Rules (with the necessary modifications to reflect the lack of a person complaining) as if—

- (a) a complaint containing it had been made under rule 5; and
- (b) rule 7 did not apply.

Ceasing to hold judicial office

20. Where a judicial office holder against whom a complaint under these Rules had been made ceases to hold any of the judicial offices listed in rule 2(1) or dies, consideration of the complaint under these Rules is to cease.

Interpretation

21. In these Rules—

“the 2008 Act” means the Judiciary and Courts (Scotland) Act 2008;

“judicial office holder concerned” means the judicial office holder against whom the allegation is made;

“Lord President” means the Lord President of the Court of Session;

“re-employed retired judge” means a person acting as a judge of the Court of Session by virtue of section 22(1) or (4) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985;

“re-employed retired sheriff principal or sheriff” means a person acting as a sheriff by virtue of section 14A(1) or (8) of the Sheriff Courts (Scotland) Act 1971;

“judicial decision” includes: a judgment in a case; a decision in relation to the conduct of proceedings; a decision in relation to case management; and, a decision in relation to court programming.

Revocation and Saving

22.—(1) The Complaints about the Judiciary (Scotland) Rules 2013 are revoked.

(2) Those Rules as they applied immediately before 01 April 2015 continue to have effect for the purpose of any complaint made but not determined, dismissed or withdrawn prior to that date.

(3) Despite the revocation of rule 21(2) of the Complaints about the Judiciary (Scotland) Rules 2013, the Complaints about the Judiciary (Scotland) Rules 2011 as they applied immediately before 8 August 2013 continue to have effect for the purpose of any complaint made but not determined, dismissed or withdrawn prior to that date.

BRIAN GILL

Lord President of the Court of Session

Edinburgh
01 April 2015



Making a complaint

A complaint to the Judicial Office for Scotland must be made in writing within **3 months** of the alleged incident you are complaining about. We accept complaints by individuals and by organisations.

You can send your complaint:

- By post to:
Judicial Office for Scotland
Parliament House
Edinburgh
EH1 1RQ
- By email: judicialofficeforscotland@scotcourts.gov.uk
- Using the online complaints form.

Before sending your complaint you should first read the rest of this leaflet. This will ensure that you are contacting the correct place and that you provide the necessary information to allow us to process your complaint.

Please note that we are not able to intervene in, or influence the outcome of proceedings before the courts. If your complaint is upheld, it will not have any bearing on the progress or outcome of any associated case before the courts.

Who can I complain about?

We can accept complaints about judicial office holders in Scotland as listed in the table below.

We <u>can</u> investigate	We <u>cannot</u> investigate
<ul style="list-style-type: none">• Judges of the Court of Session• Re-employed retired judges of the Court of Session• Chairman of the Scottish Land Court• Temporary judges of the Court of Session• Sheriffs Principal• Temporary Sheriffs Principal• Sheriffs• Re-employed retired sheriffs principal and sheriffs• Part-time sheriffs• Stipendiary magistrates• Justice of the peace <p>Please note that the term 'judge' will be used throughout this guidance to cover all of the above judicial offices.</p>	<ul style="list-style-type: none">• Tribunal Judge – contact the relevant Tribunal• Member of court staff – contact Scottish Courts and Tribunals Service - http://www.scotcourts.gov.uk/about-the-scottish-court-service/complaints-and-feedback/scs-complaints-procedure• Solicitors or Advocates- contact the Scottish Legal Complaints Commission• Judges who are no longer in office

What can I complain about?

We can only investigate complaints about a judge's **personal conduct**. We cannot consider complaints about judicial decisions or the way a case has been managed. These matters can only be challenged by appeal.

The definition of personal conduct covers a wide range of behaviour both in and outside of court. However, you should understand that on occasions a judge may have to be firm, direct or assertive in his or her management of a case.

It is not possible to provide a definitive list of what is considered personal misconduct. However, below are some examples of the types of matters we can and cannot investigate.

We can investigate	We <u>cannot</u> investigate
<ul style="list-style-type: none">• The use of racist, sexist or offensive language• Falling asleep in court• Misusing judicial status for personal gain or advantage• Conflict of interest	<ul style="list-style-type: none">• A judgment, verdict or order• Sentencing decisions• What evidence should be, or has been considered• The award of costs and damages• Whose attendance is required at court• Who should be allowed to participate in a hearing• Allegations of criminal activity (criminal allegations should be directed to the police)

For further information on what may be considered misconduct, it may be useful to look at the [Statement of Principles of Judicial Ethics](#) for the Scottish Judiciary. This is a document that describes the principles and standards which judges should adhere to in their personal and professional lives.

Time Limit

A complaint must be made within **3 months** of the incident you wish to complain about. For example if the matter you wish to complain about occurred on 10 April 20XX your complaint must reach the Judicial Office by 10 July 20XX.

The time limit for making a complaint will be extended only in **exceptional circumstances**. You may seek an extension by providing the reasons behind your delay within your original complaint document. If you do not do this, the Judicial Office for Scotland will write to you requesting that you provide a case for exceptional circumstances within 4 weeks. **Please note, that we do not regard ignorance of the Rules in itself as an exceptional circumstance.**

On-going Proceedings

If your case or appeal is on-going, you must still submit your complaint within the 3 month period. We will seek advice on whether it would be appropriate for consideration under the Rules to continue before the judicial proceedings have concluded.

What do we need from you?

To enable us to investigate your complaint efficiently we ask that you provide as much of the information listed below as possible.

You must provide the following (your complaint will not be accepted without it):

- Your name.
- An address that we can use to contact you (if providing both a postal and email address please indicate your preferred contact method).
- The name of the judicial office holder whom you wish to complain about.
- The date or dates of the alleged misconduct you wish to complain about (complaints must be made within **3 months**).
- Specific details of the alleged misconduct you wish to complain about.

Please note we cannot accept a complaint document that indicates that you do not want the judge to see it.

It will also assist us if you could provide the following;

- The court where the hearing took place (if applicable)
- The relevant case number (if known)
- Copies of any documents that you are relying on to support your complaint

It is important that you provide enough information for us to consider your complaint. For example, it is not enough to simply say that 'The judge was rude to me'. You will need to explain what was said or done by the judge that you felt was rude; providing examples of the language used or behaviour shown.

If we dismiss your complaint because it does not contain sufficient information, you will be offered a further **4 weeks** to provide the necessary details. Failure to provide further information within the time frame specified will result in your complaint being closed.

What happens when I have complained?

- We will acknowledge your complaint within 5 working days of receipt.
- If we are unable to accept your complaint we will clearly explain to you why this is.
- If your complaint is to be investigated we will clearly explain to you what is going to happen.
- We will provide you with a clear and reasoned explanation for the outcome of your complaint.
- If we are unable to help you we will try to direct you to other organisations that may be able to assist. Please see page 6 for useful websites.

Each complaint is handled in accordance with the Complaints about the Judiciary (Scotland) Rules 2015. These were introduced by the Lord President as head of the Scottish judiciary.

To gain a detailed understanding of the complaints handling process, please see our process map.

Getting help to make your complaint

We understand that you may be unable, or reluctant, to make a complaint yourself. We can take complaints from a friend, relative, or an advocate (someone who will support you), if you have given them your consent to complain for you.

You can find out about advocates in your area by contacting the Scottish Independent Advocacy Alliance.

Scottish Independent Advocacy Alliance

- Tel: 0131 556 6443
- Fax: 0131 550 9819
- Website: www.siaa.org.uk

We are committed to making our service easy to use for all members of the community. In line with our statutory equalities duties, we will always ensure that reasonable adjustments are made to help people access and use our services. If you have trouble putting your complaint in writing, or want information in another language or format, such as large print, audio or Braille, please tell us in person, or contact us at the addresses on page one.

What if I am unhappy with the way my complaint has been handled?

If you consider that the investigation into your complaint has not been carried out in accordance with the Rules you may write to:

Judicial Complaints Reviewer
Area 2A South
Victoria Quay
Edinburgh
EH6 6QQ

Please note that the Judicial Complaints Reviewer can only review how the investigation was handled and determine whether it was carried out according to the Rules. They **do not** have the power to consider the merits or disposal of a complaint.

Further information about the role and remit of Judicial Complaints Reviewer is available at:
<http://www.judicialcomplaintsreviewer.org.uk/>.

Useful Websites

- Scottish Judiciary website: <http://www.scotland-judiciary.org.uk/1/0/Home>
- Scottish Courts and Tribunals Service: <http://www.scotcourtribunals.gov.uk/>
- COPFS: <http://www.crownoffice.gov.uk/>
- Judicial Conduct Investigations Office for England and Wales:
<http://judicialconduct.judiciary.gov.uk/>
- Scottish Legal Complaints Commission: <http://www.scottishlegalcomplaints.org.uk/>
- Law Society of Scotland: <http://www.lawscot.org.uk/>
- Police Scotland: <http://www.scotland.police.uk/>



Complaint form

Your details

Title

Full Name

Address (including
postcode)

Telephone

Email

Details about your case

Name of judicial
office holder

Name of the
court

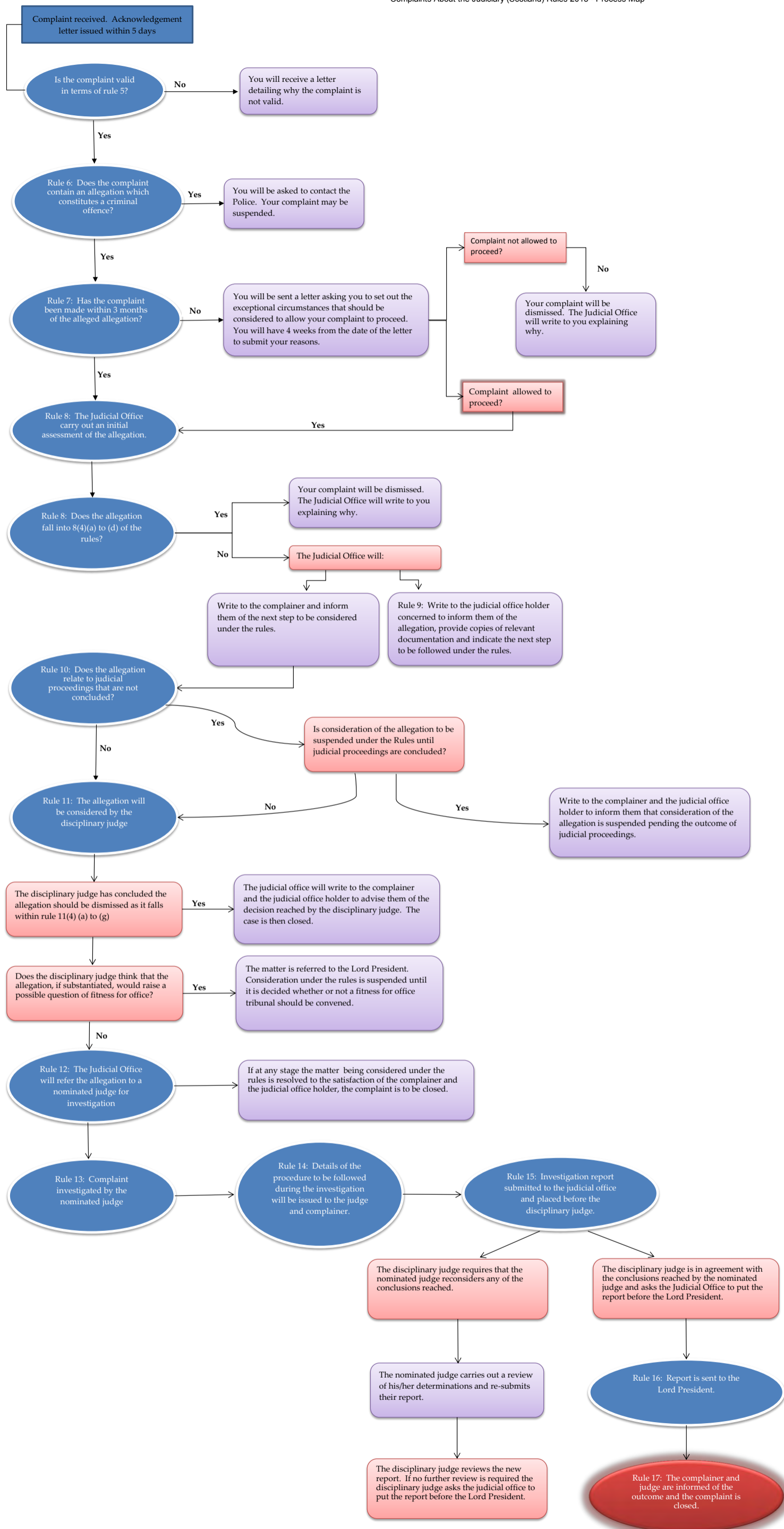
Date(s) of
alleged
misconduct

Case number
(if known)

Is your case
still on
going?

Your complaint

Description of your complaint



Judicial Office
for Scotland



The Lord President's Official Response to the Consultation on proposed amendments to the Complaints about the Judiciary (Scotland) Rules

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1. Background

As head of the Scottish Judiciary, the Lord President is responsible for making and maintaining appropriate arrangements for investigating and determining matters concerning the conduct of judicial office holders. The Judiciary and Courts (Scotland) Act 2008 makes provision for The Lord President to make rules in connection with these matters.

The previous Lord President made the Complaints about the Judiciary (Scotland) Rules in 2011. After two years of administering the Rules, some administrative issues had been noted and it was agreed that a review of the Rules should be undertaken.

The Judicial Office for Scotland (JOS), on behalf of the Lord President ran a consultation for 12 weeks in 2013. The consultation document sought views on several matters relating to proposals for revised Complaints about the Judiciary (Scotland) Rules and included draft rules.

Responses were collated, assessed and analysed. This report sets out a summary of the content of the consultation responses and the action taken in relation to the responses and suggestions received.

2. Overview of Response to Consultation

Part one of this report contains headings for the rules and steps in the process which the consultation document addressed. Under each heading, the corresponding consultation question is listed in **bold** text. Responses to the specific questions posed and the action taken in relation to those responses is provided.

Seven questions were posed in the consultation. Many of the points made in response to those questions have resulted in changes to the Rules. Further helpful suggestions arose in the course of the consultation as a result of which other changes have been implemented. Following the narrative on the consultation responses under each heading, the report outlines the changes which have been implemented.

Part two of this report outlines additional suggestions received from respondents along with changes which have been implemented in response.

Respondents were generally supportive of the draft proposals for new rules. All responses and suggestions from respondents have been considered by the Lord President.

The Lord President has approved the new rules. A copy of the new Complaints about the Judiciary (Scotland) Rules 2015 can be found [here](#).

3. Publication of Consultation Responses

The JOS received 5 responses to the consultation including a response from the previous Judicial Complaints Reviewer (JCR), Moi Ali. The JCR undertook her own mini-consultation of those who had raised a complaint under the 2011 Rules and had requested a review of the handling of their complaint. The JCR's response includes the views of those she consulted. Where approval has been granted, responses to the consultation have been published on the Judiciary of Scotland [website](#).

4. PART ONE – Responses to Consultation Questions and Action Taken

Making a Complaint

Q1. In your opinion, is the proposed Rule 5 correctly framed?

4.1 Most respondents support the proposals for amendment of this rule because it clarifies the information which must be contained in a complaint at this early stage in proceedings.

4.2 In relation to the concept of 'validity' in the 2011 Rules, some respondents expressed concerns that the word and its positioning in that rule could potentially be confusing for complainers. In this regard, those respondents welcomed the clarity provided by the draft amendment to this rule.

4.3 Some respondents felt that the rule as now drafted would be of assistance to the JOS in their initial consideration on whether a complaint has been lodged within the time limits set out in the rules.

4.4 It was suggested that the rule would benefit from amendment to clarify that a complaint against a member of the judiciary could be made by an organisation, company or other entity.

4.5 It was suggested that the rule be amended to allow for incomplete complaints (i.e. those where information required by the rules is missing) to be held open for a defined period while the complainer is given the opportunity to provide the missing documentation/information. Further, it was suggested that for those complaints falling into this category, the rule should contain a requirement for the JOS to write to the complainer reminding them of the forthcoming deadline.

4.6 It was suggested that the rule should include a list of the means by which documents can and cannot be sent, or alternatively that the JOS should provide and publish information of what constitutes "acceptable means" as set out in the draft rule.

Action Taken

4.7 Draft Rule 5 has been amended to clarify the wording regarding the requirement for address details to be provided.

4.8 The rule has been amended to clearly set out the criteria and requirements of a valid complaint. The Lord President is in agreement with the concerns expressed by some respondents that the word 'validly' could be confusing for complainers. The intention of the redrafted rule is that a complaint is termed as 'valid' when the complaint document received by the JOS contains all the relevant information required by the Rules. The redrafting clarifies any potential misunderstanding that may arise at this early point of the complaint procedure. No consideration is being given at this stage to the actual substance of the complaint itself only whether it is made in the correct format.

4.9 The redrafted rule will be of assistance to the staff of the JOS in their initial consideration about whether a complaint has been lodged within the time limits provided by the Rules. A pro-forma complaint document has been prepared for the benefit of complainers and is included in the revised Official Guidance which is available on the Judiciary of Scotland website [here](#).

4.10 In relation to the suggestion that the rule be amended to clarify that a complaint against a member of the judiciary could be made by an organisation, company or other entity, the Lord President is of the opinion that no such rule requirement is necessary. There is no provision in the Rules to exclude any category of complainer. Thus it can rightly be interpreted by any potential complainer that no such exclusion exists. The Official Guidance document has been revised to clarify this point for the benefit of complainers.

4.11 Consideration has been given to the suggestion that the rule be amended to allow for incomplete complaints (i.e. those where information required under the Rules is missing) to be held open for a defined period while the complainer is given the opportunity to provide missing documentation/information. The rules have not been amended to make provision to this effect. To do so would be contrary to the desirability to simplify and streamline the process for dealing with complaints since it would add an unnecessary layer of procedure. This is considered to be impractical on an administrative level and likely to create inefficiencies and delays within the complaints system. The revised Rules along with Official Guidance and the new pro-forma complaint form provide sufficient clarity on how to bring a complaint under the Rules.

4.12 It would not be practicable or proportionate to include a list of the means by which documents can and cannot be sent. In an environment of constantly evolving and advancing I.T and communications, it would be a cumbersome approach to amend the Rules on each occasion that advancements in communication methods led to changes in "acceptable means". However, information to this effect is incorporated in the Official Guidance for the benefit of users of the complaints process.

Time Limit

Q2. Do you agree with the form of the proposed revised Rule 8, which now incorporates the time limit alongside the initial assessment by the Judicial Office?

4.13 Most respondents who answered this question agreed with retaining the three month time limit for making a complaint under the Rules. There was a suggestion that consideration be given to extending the current three month time limit as well as a facility to further extend where reasonable to do so.

4.14 It was also suggested that the time limit should appear in the Rules as a 'stand-alone' provision as it was considered that this would be clearer for complainers.

4.15 It was suggested that there was a need to clarify the situation regarding the consideration of complaints of on-going alleged misconduct where not all of the events complained about fall within the time limits.

4.16 It was suggested that the Rules ought to be amended so that complaints which are both out of time and contain insufficient information are put on hold for a specified time. This would be pending the provision of further specific details and a case for exceptional circumstances from the complainer.

Action Taken

4.17 The provision of a specific 'stand-alone' rule on time limits for the lodging of a complaint is appropriate. It is anticipated that this amendment will benefit the functioning of the complaints process by creating clarity for complainers as well as streamlining the administration of complaints for staff of the JOS.

4.18 The new 'stand-alone' rule will facilitate the lodging of a complaint which alleges a 'course of conduct' (where not all the allegations in that complaint fall within the time limit).

4.19 The Lord President has not made provision in the rules so that complaints that are both out of time and contain insufficient information are put on hold (as described in part 4.16). To do so would, in our opinion, be contrary to the desirability to simplify and streamline the process for dealing with complaints. The Lord President has however revised the Rules in relation to cases seeking to proceed under the Rule on exceptional circumstances. The revision provides that the discretion on the decision about whether an allegation is allowed to proceed in such cases is a matter for the Disciplinary Judge (DJ) and not the JOS as previously drafted. There is however an exception where the JOS considers that the allegation would fall to be dismissed under rule 8(3). In that case the JOS may proceed to dismiss the complaint without consideration of a time extension being required.

Allegations of Criminal Conduct

Q.3 Do you agree with the new position of the rules in relation to criminal proceedings and notification of the judicial office holder (proposed revised Rules 6 and 7)?

4.20 Rule 6 - Half of the respondents who answered this question, agreed with the proposals regarding criminal proceedings as well as suggesting that a complaint falling into this category should be suspended without discretion.

4.21 There were some responses suggesting that that the draft rule was unclear about the point at which the JOS is to write to a complainer and that the Judicial Office Holder (JOH) should also be written to at this point.

4.22 There was also a suggestion that the Rules should specify what steps JOS staff should take to report any allegations of a potentially criminal nature contained in a complaint falling into this category and thereafter that staff check with the relevant authorities whether such allegations result in criminal proceedings.

Action Taken

4.23 The Lord President has revised this rule so that any complaint containing an allegation of criminal conduct under these Rules will be suspended until a decision or conclusion of any criminal proceedings.

4.24 The Lord President is clear on the purpose and statutory authority enabling the making of these rules (Section 28 Judiciary & Courts (Scotland) Act 2008). The Rules are provided to regulate procedure for complaints against the judiciary and are not designed as a mechanism to regulate JOS policy, nor does the statutory provision for their making, give authority to do so. The Lord President has therefore not made any amendment to the Rules to require JOS staff to report allegations contained in a complaint to other authorities. This would be wholly inappropriate and out with the Lord President's statutory powers under the 2008 Act to compel a civil servant to take such a course of action.

4.25 Official Guidance has been updated to ensure clarity on this matter for the benefit of complainers.

4.26 In relation to a suggestion that the Rules be amended to provide that the JOS write to the JOH as well as the complainer at this point in proceedings, the Lord President considers this suggestion to be impractical. This would create administrative inefficiencies within the complaints system. There is no added benefit to the complaints procedure by making an additional administrative requirement in the processing of a complaint which would automatically be suspended at this stage. The revised Rules along with the revised Official Guidance are sufficient and fit for purpose.

Notification of Judicial Office Holder

4.27 The consultation responses contained no comments in relation to draft Rule 7 (Rule 9 under the new published Rules). However, some of the general comments made by respondents are applicable to this section of the draft and are discussed here.

4.28 It was suggested that the rules be reversed in order that a complaint can be assessed and thereafter the JOH be informed either, that a complaint has been received and will be considered, or that a complaint has been received and will be dismissed. It is suggested that that this change would remove the possibility of unnecessary worry for JOHs where complaints are dismissed as well as removing a layer of bureaucracy and streamlining the complaints process.

4.29 Other comments suggested that the JOH should only be informed of a complaint when it has been transmitted to the disciplinary judge (DJ).

Action Taken

4.30 The Lord President supports the suggested revisions and has amended the Rules to make provision for initial assessment by JOS staff of a complaint which has not been suspended under the rule relating to an allegation of criminal conduct or dismissed under the rule on time limits.

4.31 Intimation (including a document containing the allegation and information on next steps) to the JOH will now only happen if a complaint is to be considered by the disciplinary judge under rule 10 or 11.

4.32 Revising the Rules to this effect is likely to streamline the complaints process and create efficiencies for the benefit of complainers.

Initial Assessment

Q4. Do you agree with the form of the proposed revised Rule 8, which now incorporates the time limit alongside the initial assessment by the Judicial Office?

4.33 Consultation responses and actions on proposals regarding appropriate time limits are outlined previously under the section titled "Time Limit".

Interpretation of 'Judicial Decision'

Q.5 Should the words 'judicial case management or judicial management of court programming' be removed as in revised Rules 8(4)(b) and 10(4)(b) and a definition of 'judicial decision' including those two types of decision be inserted into the interpretation section (at section 20)?

4.34 All respondents who answered this question agreed with the need for clarification in the wording of the rules in this specific matter. It was suggested by respondents that the words, 'judicial case management or judicial management of court programming', should be removed from the draft provisions and replaced with

a definition of the wording 'judicial decision' in the interpretation section. Those responding all submitted that there was a requirement for clarity and simplicity in this matter to make it easier for the general public to understand what CANNOT be complained about under the Rules. It was also suggested that examples to illustrate the matter should be provided.

Action Taken

4.35 The Lord President has revised the Rules to remove the wording '*judicial case management or judicial management of court programming*' where it appears in individual rules. The words '*judicial decision*' has now been included in the interpretation in part 21 of the Rules. In addition, Official Guidance has been revised to include some examples of what constitutes a judicial decision. It is anticipated that these revisions will provide clarity on the issue and will consequently be beneficial to users of the complaints process.

On-going Proceedings

Q6. Should there be a separate rule for 'on-going proceedings', as in the proposed revised Rules at Rule 9?

4.36 Four of the five respondents who answered this question agreed with the proposal that there should be a separate rule for on-going proceedings after initial assessment by JOS.

4.37 One respondent suggested that the DJ may wish to consult the sheriff principal for a view before giving advice under this rule.

Action Taken

4.38 Rule 10 of the new Rules makes provision for seeking advice from the DJ and for informing the complainer and JOH of any suspension in proceedings in the circumstances outlined in the rule.

4.39 Official Guidance has been revised to assist complainers and clearly sets out the practical effect upon a complaint which is suspended at this stage of the Rules.

4.40 Internal staff guidance has been reviewed to ensure clarity about the JOS responsibilities at this stage. The requirement to write to the complainer and JOH where a complaint is suspended under this rule is included.

4.41 The Lord President does not consider it appropriate that the Rules incorporate a requirement that the DJ consult with a Sheriff Principal for a view before giving advice. That is not to say that the DJ may choose to do so of his/her own accord should circumstances arise.

Withdrawal and Deemed Withdrawal of Complaint

Q7. Proposed revised Rule 17(2) provides that if the person complaining fails to respond ‘*within a reasonable period*’ the complaint is deemed to be withdrawn. What in your view would be a ‘*reasonable period*’?

4.42 Respondents gave varying suggestions for what they considered to be a reasonable period, for example; 14 days, 28 days plus, a period to vary with the circumstances and one respondent disagreed with the proposal.

4.43 It was suggested that it should be a matter for the DJ or Nominated Judge (NJ), whether a complaint ought to be withdrawn. That the draft wording of the rule should be amended from “will be deemed” to “may be deemed”, giving a level of discretion within this stage of the procedure.

4.44 It was suggested that a complaint ought to be treated as withdrawn only after a reminder or ‘ultimatum’ letter has been sent to the complainer. This being after the expiry of the relevant period.

4.45 The respondent who disagreed with the proposal suggested that complaints should not be dropped since there could be varying circumstances that could mean a complainer ceases contact.

Action Taken

4.46 The Lord President has deemed that 28 days is a reasonable period of time to allow a complainer sufficient opportunity to respond. Provision has therefore been made within the Rules (see rule 18(2)).

4.47 It is also considered appropriate that the rule affords a level of discretion as to whether a complaint should subsequently be withdrawn. Accordingly, the heading of the rule has been revised to delete the wording “*and deemed withdrawal*”; the draft rule has been revised to delete the wording “*will be deemed*” and “*will be treated*” to “*may*” on each occasion where it appears in the draft.

4.48 The final determination on whether a complaint is withdrawn under this rule will be made by either the DJ or NJ in each case, according to the relevant stage the case has reached under the complaints process.

4.49 Internal staff guidance has been revised to clarify the procedure that officials will follow, which includes a letter being issued to a complainer prior to withdrawing a complaint and affording them with the opportunity to respond within 28 days.

Ceasing to Hold Judicial Office

Q7. Should there be provision that a serious complaint which has reached investigation at the point a judicial office holder has left office may proceed to determination?

4.50 Most respondents indicated that they have no objection to complaints being considered following a JOH leaving office, provided that clarification is given for the circumstances in which the Lord President could proceed. However, respondents highlighted that such a provision may not be competent under the terms of section 29 of the 2008 Act and raised the question of whether a JOH could be compelled to co-operate with an investigation in such circumstances.

Action Taken

4.51 The Lord President is of the view that a complaint against an individual who no longer holds judicial office is incompetent under these Rules. Furthermore the Lord President has no authority to take any action under section 29 of the 2008 Act.

5. PART TWO – Additional suggestions received in Consultation responses and Action Taken

Complainers

5.1 It was suggested that the Rules should restrict who could bring about a conduct complaint in relation to a member of the judiciary. The view taken by the respondent was that complaints should be “*confined to those who might be thought of as being "on the receiving end" of the judicial misconduct alleged but not include mere bystanders/observers.*”

Action Taken

5.2 The Lord President does not consider this proposition to be valid in the context of the purpose of the Rules and the procedures they set out. The purpose of the Rules is to provide a framework for the administration of complaints about judicial misconduct, whatever form that misconduct may take. In this respect, no inference should be drawn from these Rules to suggest that only parties to individual court proceedings are capable of making a complaint about the conduct of a JOH. Therefore to make any such provision in the Rules would be contrary to the inherent purpose of the Rules themselves and as such is inappropriate.

Referral to the Nominated Judge

5.3 It was suggested that informal resolution should be an option at any stage after a complaint is passed to the NJ.

5.4 It was suggested that draft Rule 12 be revised to provide for resolution of the complaint to the mutual satisfaction of the complainer and JOH.

5.5 It was suggested that there may also be benefit in building in the ability to take other action under the Rules in cases that do not amount to misconduct, i.e. where a training need is identified.

Action Taken

5.6 Rule 12 has been revised to ensure that where the NJ feels that a complaint is deemed capable of resolution to the satisfaction of the complainer, that may sought to be achieved at any stage of the investigation process.

5.7 The suggestion that this rule should be reworded to express that the matter may be resolved to the mutual satisfaction of the complainer and JOH was not deemed practical. Such a provision would not be viable or workable in the context of a complaints process.

5.8 The suggestion that a matter identified during the course of a complaint which was not necessarily misconduct but identified a training need should be taken forward under the complaints process was not deemed practical for inclusion in these Rules. Training needs require to be addressed with the assistance and guidance of the Judicial Institute.

Procedure and Conduct of Investigation

5.9 It was observed that provision may be needed in Rule 14 for any contemporaneous notes taken by the NJ during the course of the complaints process to be accepted as accurate or in some way deemed to be accepted.

Action Taken

5.10 The Lord President has considered the suggestion and is of the view that whilst this issue could be termed as 'good practice' for investigations, it will benefit the streamlining of the complaints process to a greater degree if incorporated into the Rules. A revision to the Rules has been made to the effect that notes taken by the NJ under these Rules are deemed to be an accurate record of any interview where the interviewee has signed a copy of the notes.

The Roles in Handling a Complaint

5.11 One respondent questioned the nature of the complaints process and the administration of the process by the JOS, suggesting that the person who is going to hear a complaint and make a decision should be independent, impartial and should not be from the same institution.

Action Taken

5.12 In order for the Lord President to fulfil his responsibilities under the 2008 Act, the procedures (and revised Rules and Official Guidance) and administration of the complaints process by JOS is the appropriate manner for dealing with complaints against the judiciary. Furthermore, the Scottish Government has appointed a [Judicial Complaints Reviewer](#) (JCR). Complainers can obtain an impartial and free service if they are unhappy with the way their complaint about the conduct of a member of the judiciary has been handled by the Judicial Office for Scotland. Members of the Scottish judiciary who have been the subject of a complaint may also seek a review of the handling of that complaint.

Evidence

5.13 A respondent made a suggestion about evidence to support a complaint and recommended that each court room should have a voice recorder and video recorder so that everything can be heard and watched later should a complaint be lodged.

Action Taken

5.14 This is an operational matter for the Scottish Courts and Tribunals Service and accordingly the JOS is not in a position to take this matter forward.

Appeals

5.15 It was suggested that there should be provision in the Rules to allow for JOS decisions to be appealed, escalated internally for review or other action as appropriate, so that all such requests are dealt with consistently.

Action Taken

5.16 The new Rules, Official Guidance and internal staff guidance provide a robust framework for handling of complaints against the judiciary. A complainer is able to take their case to the JCR should they be unhappy with the handling of their complaint. A further appeal process is not desirable in the Rules as this would be contrary to the summary nature of the process and undermine the statutory authority and responsibility of the Lord President under the 2008 Act for dealing with matters of judicial conduct and discipline. Provision to review the handling of complaints against JOHs exists under the statutory powers of the JCR and no further legislative provision is necessary.

Consideration by Disciplinary Judge

5.17 It was suggested that written reasons should be provided to complainers when their complaint is dismissed and that the Rules should reflect such a requirement.

Action Taken

5.18 Any letter notifying a complainer that their complaint is being dismissed will state the rule under which the complaint is dismissed and the reason for dismissal.

Fitness for Office

5.19 It was suggested that the draft rules appeared to contain no provision for informing the JOH or the complainer that an allegation is being considered by the Lord President as a possible fitness for office issue. Nor for providing reasons to the two parties if it is decided that it was not a fitness for office issue and it was suggested that the Rules be revised to this effect.

Action Taken

5.20 Rules 11(8) to (10) make appropriate provision for the matters raised.

Investigation Reports

5.21 It was suggested that the Lord President should be able to take action even when the NJ recommends no action. The intention of the draft rule was queried in that the rule provides that the Lord President may exercise a disciplinary power only when the NJ has so recommended. It was pointed out that the 2013 amendment to the Rules allowed the Lord President to exercise a power which was not the power recommended by the NJ but raised the question of what the effect is if the NJ has recommended no power be exercised? It was suggested that having received a report from the NJ holding a complaint substantiated (in whole or in part), it may be appropriate that the Lord President be empowered to impose a disciplinary sanction if he thinks fit even if there has been no such recommendation by the NJ.

5.22 It was suggested that the Rules should compel the Lord President to share the investigation report with the JOH in cases where the LP proposes to take disciplinary action, so that the JOH has a fair opportunity to make representations.

5.23 It was suggested that the Rules should compel the Lord President, in the case of upheld complaints, to share the investigation report with the complainer and in complaints which are not upheld, a summary of the report could be provided.

Action Taken

5.24 Section 29(1) of the Courts and Judiciary (Scotland) Act specifies the powers the Lord President can exercise when there has been an investigation into a complaint and the person carrying out the investigation recommends he takes action. There is no statutory authority under the Act for the Lord President to take action when the person carrying out the investigation has not recommended he exercise a power. However, this does not restrict what the Lord President may do informally, for other purposes or where any advice or warning is not given to a particular JOH.

5.25 Rule 16(5) makes appropriate provision for disclosure by the Lord President of all pertinent matters relating to the nature of a complaint allegation against a JOH. The discretion the Lord President has in this rule, regarding the sharing of the Investigation report (in whole or part), is appropriate.

Application of the Rules

5.26 It was suggested by one respondent that the Rules should make clear to complainers how to complain about the Lord President and that they should set out a process for the JOS to assess such complaints and pass them to the Scottish Government. In relation to this it was also suggested that draft Rule 2(a) be amended to define what is meant under the Rules by “judges of the Court of Session” i.e. that it does not include the Lord President.

Action Taken

5.27 The suggestion that the Rules should contain provisions for complaints against the Lord President is wholly inappropriate. These Rules are made by the Lord President in order to assist him in discharging his responsibilities under Section 2(e) of the 2008 Act.

Miscellaneous Amendments

Interpretation

5.28 The Rules have been amended to include the interpretation of '*re-employed retired judge*' which was omitted in error from the draft.

5.29 Interpretation of the wording '*judicial decision*' has been amended and simplified.

Revocation and Saving

5.30 The Rules have been revised to include a new subsection to provide for any on-going cases which are subject to the 2011 and 2013 Rules.

Consultation Questions

1. In your opinion, is the proposed rule 5 correctly framed?
2. Do you agree with the new position of the rules in relation to criminal proceedings and notification of the judicial office holder (proposed revised Rules 6 and 7)?
3. Do you agree with the form of the proposed revised rule 8, which now incorporates the time limit alongside the initial assessment by the Judicial Office?
4. Should the words 'judicial case management or judicial management of court programming' be removed as in revised rules 8(4)(b) and 10(4)(b) and a definition of 'judicial decision' including those two types of decision be inserted into the interpretation section (at section 20)?
5. Should there be a separate rule for 'on-going proceedings', as in the proposed revised rules at Rule 9?
6. Proposed revised rule 17 (2) provides that if person complaining fails to respond 'within a reasonable period' the complaint is deemed to be withdrawn. What in your view would be a 'reasonable period'?
6. Should there be provision that a serious complaint which has reached investigation at the point a judicial office holder has left office may proceed to determination?

**CONSULTATION ON PROPOSED REVISED RULES:
COMPLAINTS ABOUT THE JUDICIARY (SCOTLAND) RULES 2014**

RESPONDENT INFORMATION FORM

Please Note this form must be returned with your response to ensure that we handle your response appropriately

If you hold judicial office, please specify:	Sheriffs Principal Per Convener
--	------------------------------------

Title (Mr, Ms, Sheriff etc.)	Sheriff Principal
Surname	Dunlop
Forename	Alastair
Postal Address	Sheriff Court House
	Tay Street
	Perth
	PH2 8NL
Phone Number on which we may contact you.	
Email address at which we may contact you.	

Confidentiality

If you would like your responses to be treated as confidential please indicate this clearly. Responses from those who reply in confidence will only be included in numerical totals and names and text will not appear in the list of respondents.

**CONSULTATION ON PROPOSED REVISED RULES:
COMPLAINTS ABOUT THE JUDICIARY (SCOTLAND) RULES 2014**

Please return the completed respondent information form and your response to the
consultation by **16 December 2013**

by e mail to: judicialofficeforscotland@scotcourts.gov.uk; or

in writing to: Complaints Rules Consultation
Judicial Office for Scotland
-3/R12, Parliament House
Parliament Square
Edinburgh
EH1 1RQ

CONSULTATION ON PROPOSED REVISED RULES:
COMPLAINTS ABOUT THE JUDICIARY (SCOTLAND) RULES 2014

Consultation Questions

1. In your opinion, is the proposed rule 5 correctly framed?

<input type="checkbox"/>	YES ✓
<input type="checkbox"/>	NO
We regard the proposed rule 5 as an improvement on its predecessor.	

2. Do you agree with the new position of the rules in relation to criminal proceedings and notification of the judicial office holder (proposed revised Rules 6 and 7)?

<input type="checkbox"/>	YES ✓
<input type="checkbox"/>	NO
This seems satisfactory to us.	

3. Do you agree with the form of the proposed revised rule 8, which now incorporates the time limit alongside the initial assessment by the Judicial Office?

<input type="checkbox"/>	YES ✓
<input type="checkbox"/>	NO
We consider it important that the three month time limit be retained somewhere in the Rules and less important where exactly it appears or is positioned.	

4. Should the words 'judicial case management or judicial management of court programming' be removed as in revised rules 8(4)(b) and 10(4)(b) and a definition of 'judicial decision' including those two types of decision be inserted into the interpretation section (at section 20)?

<input type="checkbox"/>	YES ✓
<input type="checkbox"/>	NO
We agree that the current wording is confusing to the lay person and that the proposed definition would be an improvement.	

CONSULTATION ON PROPOSED REVISED RULES:
COMPLAINTS ABOUT THE JUDICIARY (SCOTLAND) RULES 2014

5. Should there be a separate rule for 'on-going proceedings', as in the proposed revised rules at Rule 9?

	YES ✓
	NO
<p>We think there should be such a rule and we do not think it matters whether it is separate or not. We think that such advice from the disciplinary judge might be of greater value in a sheriff court context if he were to consult the sheriff principal for a view on the practicalities of the matter before giving such advice.</p>	

6. Proposed revised rule 17 (2) provides that if person complaining fails to respond 'within a reasonable period' the complaint is deemed to be withdrawn. What in your view would be a 'reasonable period'?

<p>Such a provision is desirable but the "reasonable period" is bound to vary with the circumstances.</p>	
<p>The real question is who should be the judge of what is a reasonable period in the circumstances beyond which a complaint will be deemed to have been withdrawn. We suggest this should be a matter for the disciplinary judge and it might be preferable for the words "will be deemed" to be altered to "may be deemed."</p>	

6. Should there be provision that a serious complaint which has reached investigation at the point a judicial office holder has left office may proceed to determination?

	YES ✓
	NO
<p>We have no objection to the Lord President having a discretion to continue the complaint to a determination by the wording proposed in a revised rule 19. We do wonder however whether the Lord President would have power under section 29 of the Judiciary and Courts (Scotland) Act 2008 to exercise any of the powers specified in section 29(1) when the person complained against is no longer a judicial office holder. If there is no such power the provisions of rule 12(2)(b) might require revisal. Furthermore could the former judicial office holder be compelled to co-operate with the investigation – see for example rule 13(4)?</p>	

We have noted hereunder further matters for consideration.

CONSULTATION ON PROPOSED REVISED RULES:
COMPLAINTS ABOUT THE JUDICIARY (SCOTLAND) RULES 2014

Further matters for consideration:

1. In their consultation document at paragraph 26 the Judicial Office (JO) refer to “guidance” which they propose will be used to explain to lay persons the meaning of “judicial decision”. They omit however the most important facet of a judicial decision, which is that it may be challenged only by way of appropriate appeal proceedings (and not by way of complaint under the Rules).
2. In their paragraph 30 the JO make reference to the possibility of resolution under rule 11(6), which speaks of considering whether the matter may be capable of resolution “to the satisfaction of the person complaining”. We consider that any resolution under this provision has to be to the mutual satisfaction of the complainer and judicial office holder and we would suggest the addition of the words “and in a manner acceptable to the judicial office holder”. This is perhaps implied in the existing wording but we consider it would be better made express.
3. Rule 15 of the proposed new Rules still fetters the Lord President to a position where he may exercise a disciplinary power only when the nominated judge has so recommended. Is this right and is it the intention? The 2013 amendment allowed the Lord President to exercise a power which was not the power recommended by the nominated judge but what if the nominated judge has recommended no power be exercised? Having received a report from the nominated judge holding the complaint substantiated (in whole or in part), should the Lord President not be empowered to impose a disciplinary sanction if he thinks fit even if there has been no such recommendation by the compiler of the report?
4. There are some drafting errors in proposed rule 17 which should perhaps be ironed out.
5. In new rule 20 (definitions) there appears to be an omission in that previously the rule contained a definition of “re-employed retired judge” which now for some reason does not appear.
6. In paragraph 36 the JO appears to suggest that all judicial office holders will be notified of complaints about them. Is this some change to existing practice and, if so,

**CONSULTATION ON PROPOSED REVISED RULES:
COMPLAINTS ABOUT THE JUDICIARY (SCOTLAND) RULES 2014**

does it mean that sheriffs will all be informed even if it is a “duff complaint” which will be or has been dismissed at the first hurdle by the Judicial Office? On balance we would favour a scheme in which the judicial office holder should only be informed of a complaint when it has been transmitted to the disciplinary judge.

7. We think some thought should be given to the question who has a proper title to make a complaint about alleged judicial misconduct, a category which should in our view be confined to those who might be thought of as being "on the receiving end" of the judicial misconduct alleged but not include mere bystanders/observers.

**CONSULTATION ON PROPOSED REVISED RULES:
COMPLAINTS ABOUT THE JUDICIARY (SCOTLAND) RULES 2014**

RESPONDENT INFORMATION FORM

Please Note this form must be returned with your response to ensure that we handle your response appropriately

If you hold judicial office, please specify:	The Sheriffs' Association
--	---------------------------

Title (Mr, Ms, Sheriff etc.)	Secretary
Surname	Sheriff Gordon Liddle
Forename	
Postal Address	Sheriff's Chambers, Sheriff Court, Edinburgh EH1 1LB
Phone Number on which we may contact you.	
Email address at which we may contact you.	

Confidentiality

**CONSULTATION ON PROPOSED REVISED RULES:
COMPLAINTS ABOUT THE JUDICIARY (SCOTLAND) RULES 2014**

**If you would like your responses to be treated as confidential please indicate this clearly.
Responses from those who reply in confidence will only be included in numerical totals
and names and text will not appear in the list of respondents.**

Please return the completed respondent information form and your response to the
consultation by **16 December 2013**

by e mail to: judicialofficeforscotland@scotcourts.gov.uk; or

in writing to: Complaints Rules Consultation
Judicial Office for Scotland
-3/R12, Parliament House
Parliament Square
Edinburgh
EH1 1RQ

CONSULTATION ON PROPOSED REVISED RULES:
COMPLAINTS ABOUT THE JUDICIARY (SCOTLAND) RULES 2014

Consultation Questions

1. In your opinion, is the proposed rule 5 correctly framed?

	YES
<p>The proposed rule 5 imposes an obligation on the complainer to provide detail of the complaint. This is only fair to the judicial office holder. The new requirement for the inclusion of the date or dates of the alleged misconduct is particularly welcome, given the volume of individuals with whom sheriffs deal daily.</p> <p>In our view, while recognising the value of discouraging prolixity, the complainer should be obliged to afford as much specification as possible of what is being complained about.</p>	

2. Do you agree with the new position of the rules in relation to criminal proceedings and notification of the judicial office holder (proposed revised Rules 6 and 7)?

	NOT FULLY IN AGREEMENT
<p>The proposed rules 6 and 7 seem to allow for the possibility of a complaint being considered and dismissed in terms of rule 8(3) without having to await the outcome of any criminal proceedings against, or a decision not to prosecute, the judicial office holder. Given the likely stressful situation in such a case, that clarification is welcome.</p> <p>Notification of a complaint, even if combined with intimation that it has been dismissed, is appropriate, not least if proceedings involving the complainer are ongoing.</p> <p>However, rule 6(2)(b) only provides for the Judicial Office to write to the complainant. In our view the judicial office holder should also be written to.</p>	

3. Do you agree with the form of the proposed revised rule 8, which now incorporates the time limit alongside the initial assessment by the Judicial Office?

	YES
<p>This appears appropriate as the proposed Rule 8(4) allows the judicial office to examine, assess and, if appropriate, dismiss what might be termed an 'irrelevant' complaint whether it has been made within the three month time limit or not. As we read Rule 8, therefore, Rule 8(5) only comes into play in respect of a complaint which does not fall to be dismissed in terms of rule 8(4) but <i>ex facie</i> is 'out of time'. In that event the complainer, even with an otherwise <i>prima facie</i> valid complaint would still have to satisfy the disciplinary judge that exceptional circumstances exist which justify allowing the allegation to proceed.</p> <p>The Association welcomes the retention of the three month limitation period. Sheriffs deal with many people and items of business on a daily basis, such that it would be difficult, if not impossible, to recall any particular incident which had occurred in the distant past.</p>	

CONSULTATION ON PROPOSED REVISED RULES:
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4. Should the words 'judicial case management or judicial management of court programming' be removed as in revised rules 8(4)(b) and 10(4)(b) and a definition of 'judicial decision' including those two types of decision be inserted into the interpretation section (at section 20)?

	YES
This is a clarification which will lead to easier understanding of what may not be complained about on the part of the general public.	

5. Should there be a separate rule for 'on-going proceedings', as in the proposed revised rules at Rule 9?

	YES
This proposed rule applies to complaints other than those falling to be dismissed after initial assessment by the Judicial Office in terms of Rule 8. The referral to the disciplinary judge for advice as to whether to delay action on the complaint until the proceedings are finished seems appropriate.	

6. Proposed revised rule 17 (2) provides that if person complaining fails to respond 'within a reasonable period' the complaint is deemed to be withdrawn. What in your view would be a 'reasonable period'?

Fourteen days.	
Being the object of a complaint is stressful for the judicial office holder. The suggested period seems sufficient time in the era of immediate, electronic communication for a complainer, if he is serious, to respond.	
Withdrawal, or deemed withdrawal, of the complaint is only one factor in the decision as to whether to continue with investigation, so there is no reason to extend the time for response beyond the suggested period.	

6. (sic) Should there be provision that a serious complaint which has reached investigation at the point a judicial office holder has left office may proceed to determination?

	NO
The overwhelming majority view is that we fail to see what purpose this would serve or if it is competent. If a complaint is made out, the Lord President's powers are listed in section 29 of the Judiciary and Courts (Scotland) Act 2008. Those can only be imposed on a 'judicial office holder'. A retired judge or sheriff, who has not been re-employed, is not a 'judicial office holder'.	
If it is incompetent for the Lord President to apply a disciplinary sanction in terms of section 29, then the rules should not go beyond that. If it is incompetent, then it would serve only	

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to raise false expectations on the part of a complainant.

Further, the powers, formal advice, a formal warning or a reprimand, are clearly aimed at encouraging better practice on the part of a serving judge. In that situation what purpose would a determination or sanction achieve in respect of an individual who is no longer a judicial office holder?

We would accordingly strongly advocate the removal of the additional words 'except where the Lord President decides otherwise' from the proposed new rule 19. Rule 19 should be retained in its present form.

**CONSULTATION ON PROPOSED REVISED RULES:
COMPLAINTS ABOUT THE JUDICIARY (SCOTLAND) RULES 2014**

RESPONDENT INFORMATION FORM

Please Note this form must be returned with your response to ensure that we handle your response appropriately

If you hold judicial office, please specify:	
--	--

Title (Mr, Ms, Sheriff etc.)	Faculty of Advocates
Surname	
Forename	
Postal Address	Advocates Library
	Parliament House
	Edinburgh
	EH1 1RF
Phone Number on which we may contact you.	0131 226 5071
Email address at which we may contact you.	deans.secretariat@advocates.org.uk

Confidentiality

If you would like your responses to be treated as confidential please indicate this clearly. Responses from those who reply in confidence will only be included in numerical totals and names and text will not appear in the list of respondents.

**CONSULTATION ON PROPOSED REVISED RULES:
COMPLAINTS ABOUT THE JUDICIARY (SCOTLAND) RULES 2014**

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**in writing to: Complaints Rules Consultation
Judicial Office for Scotland
-3/R12, Parliament House
Parliament Square
Edinburgh
EH1 1RQ**

CONSULTATION ON PROPOSED REVISED RULES:
COMPLAINTS ABOUT THE JUDICIARY (SCOTLAND) RULES 2014

Consultation Questions

1. In your opinion, is the proposed rule 5 correctly framed?

X	YES
	NO
<p>The Faculty agrees that removing the concept of “validity” increases the clarity of this rule. We agree also that complainers should be required to give a date or dates for the conduct complained of, not only to assist in assessing the complaint against a time limit but also to meet a basic standard of specification of the matter(s) they wish to raise.</p>	

2. Do you agree with the new position of the rules in relation to criminal proceedings and notification of the judicial office holder (proposed revised Rules 6 and 7)?

X	YES
	NO
<p>We agree with the observation made that criminal proceedings take precedence. We recognise that the rules cover procedure and not policy, and that they are not designed to regulate what the Judicial Office ought to do about reporting to Crown Office matters which come to its attention. Having said that, in light of the right to silence of an accused person, we would expect the revised rules to stipulate that consideration of a complaint under the rules “shall” be suspended rather than “may” be suspended in these circumstances. This would apply whether the criminal proceedings are running in parallel to a complaint under these rules, or whether the Judicial Office itself initiated referral of the matter to Crown Office. We consider the proposed rule 6(2)(b) to be unclear about the point at which the Judicial Office will write to the complainer, and to what effect.</p>	

3. Do you agree with the form of the proposed revised rule 8, which now incorporates the time limit alongside the initial assessment by the Judicial Office?

	YES
X	NO
<p>We are not entirely clear about the mischief which is sought to be addressed in paragraph 22 of the consultation document. If the intention is to enable the JO to intimate to the judicial office holder in one communication that a complaint has been made but determined to be out of time then we see merit in such an approach. However, the wording of proposed rules 7(2) and/or 8(1) will need to be amended if the intention is to be achieved. We also support retention of the short time limit of three months as being in the interests of all parties, and not the longer period explored in the consultation document. However, we also believe that the rules should include, as they currently do, a clear, stand alone, provision specifying that (subject to the provision for consideration of exceptional circumstances) a three month time limit applies. In our view the proposed drafting of rule 8(5) hides this away in a section which is more concerned with circumstances in which the time limit is not to apply</p>	

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4. Should the words 'judicial case management or judicial management of court programming' be removed as in revised rules 8(4)(b) and 10(4)(b) and a definition of 'judicial decision' including those two types of decision be inserted into the interpretation section (at section 20)?

X	YES
	NO
The proposed amendment achieves the aim of simplicity and clarity.	

5. Should there be a separate rule for 'on-going proceedings', as in the proposed revised rules at Rule 9?

X	YES
	NO
We agree with the comments in paragraph 29 of the consultation document.	

6. Proposed revised rule 17 (2) provides that if person complaining fails to respond 'within a reasonable period' the complaint is deemed to be withdrawn. What in your view would be a 'reasonable period'?

28 days plus	
In our view, a period of 28 days would be reasonable, but we would also consider it appropriate for the complaint to be treated as withdrawn only after a reminder or ultimatum letter advising of the intention to invoke rule 17(2) has been sent after the expiry of such a period, and in turn gone unanswered.	

6. Should there be provision that a serious complaint which has reached investigation at the point a judicial office holder has left office may proceed to determination?

X	YES
	NO
We have no particular experience on which to draw in answering this question, but on consideration of the consultation document it appears to be an appropriate option for the Lord President to have available.	

In addition, we observe that while we readily understand the thinking behind the changes to Rule 13(3), note-taking will be effective as a means of cross-checking allegations of misunderstanding or mis-quotation only if the notes are accepted as accurate or in some way deemed to be so accepted.

FORMAL RESPONSE FROM THE JUDICIAL COMPLAINTS REVIEWER TO THE CONSULTATION ON PROPOSED REVISED RULES:

COMPLAINTS ABOUT THE JUDICIARY (SCOTLAND) RULES 2014

INTRODUCTION

I welcome the opportunity to respond to this consultation on the (current 2011) Rules and the proposed (2014) Rules. It would have been helpful to have been involved at an earlier stage, in order to influence the Rules which are now being consulted upon. When the Rules in England and Wales were reviewed, the working group involved my counterpart there, the Ombudsman. I believe that such involvement at that early stage would have been beneficial, to help formulate these proposals rather than merely respond to them.

I support the Lord President's decision to delay the review of the Rules, as the longer experience of operating under the existing Rules has allowed for a more considered response. A review in summer 2012 would have been premature.

To inform my response to this consultation I undertook my own mini-consultation in which I wrote to 28 individuals who had made complaints using the 2011 Rules (the letter I sent can be found in the Appendix). I received detailed replies from 17 (over 60%), to whom I am very grateful. Some sent me an initial response followed by a more detailed one. Many included other documentation to support their views. All gave careful and considered responses based on their own experiences of the complaints system.

I also invited the SPSO (Scottish Public Service Ombudsman) to respond directly to the consultation, as I was concerned that the formal list of consultees was too judicial-focussed and could benefit from the comments of those who have good experience of operating public sector complaints procedures. I also informed the Judicial Office in Northern Ireland of the consultation and I used social media to publicise it.

My response includes representative quotes from those I consulted in order to give a flavour of how the Rules are viewed by people who have actually used them from start right through to review. (All of those who have requested reviews have been members of the public. My service is equally available to the judicial office holder (JOH) who has been the subject of a complaint.) Some of the quotes I have included are lengthy, but I feel that they serve to

present a good flavour of the sentiments that were expressed by those who responded to me. I have also included quotes from an organisation ('Organisation R') which wrote to me after I had begun my own consultation, seeking a review of the handling of their complaint. With their permission I have lifted some sections of their initial letter to me, as their comments are pertinent to this consultation.

I accept that those who sought independent review are, of course, people who were dissatisfied with the process and may not therefore necessarily be representative of everyone who used the complaints Rules.

I will ensure that everyone who replied to my consultation receives a copy of this response and that it is published on my website.

I am broadly supportive of the proposed amendments, which will provide more clarity, but they do not go far enough. The Rules could be significantly strengthened to make them fairer and more user-friendly. The recommendations contained in this report set out further enhancements for consideration.

- Part 1 of this response contains general comments by way of a backdrop.
- Part 2 moves on to address the Rules in roughly numerical order.

I hope that you find these observations and recommendations helpful and that they will influence the final version of the Rules. If I can be of any further assistance, I am more than happy to offer any help and support that I can.

Moi Ali
Judicial Complaints Reviewer
Monday 2nd December 2013

PART 1: General Comments

Valuing complaints

The revision of the complaints Rules provides a marvellous opportunity to create a new, more usable set of Rules that will help dismiss some of the negative perceptions the public have of the current complaints process. Unfortunately, the draft Rules have missed the opportunity to do just that. I hope that as a result of feedback received as part of this consultation process, the final Rules will set out a complaints process that is fair, proportionate, transparent and easy to understand.

One of my principal concerns relates to the style and tone of the Rules, and the way in which they have been constructed, giving the impression that they have been devised to deter people from complaining, to find reasons to reject a complaint at the earliest opportunity, and to over-protect the judiciary. This point is made repeatedly in the responses I received:

Mr C: "The approach taken in the rules is to put a series of hurdles in the way of a complainant. If your complaint isn't dismissed at first stage it goes to the next stage - and if it's not dismissed then it goes to the next stage etc. The presumption therefore appears to be that complaints won't have merit and I would question whether this is fair and appropriate."

Organisation R: "This was the first complaint against the Judiciary made by this organisation. The decision to complain was not taken lightly...I do believe the current Rules are constructed in an unhelpful and restricted manner that serves to deter complaints rather than try and engage with users of the Court. In raising these issues it is my hope that the Judicial Complaints process can be improved. This has been a frustrating and disappointing experience for my staff."

*Mrs Q: "In summary, you have asked me to comment on my experience of the Rules – **they are not working**, because they are stacked against the people they allegedly seek to serve. They are however, doing a grand job of serving and protecting the judges who are the subjects of the public's complaints. The statistics on the current Rules clearly demonstrate that they urgently require a complete, radical change of ethos. The minor tweaking at the edges of the current Rules as outlined in the Lord President's proposals is not nearly enough. Complaints about the judiciary need to be investigated and judged by a transparently independent authority, such as yourself [the JCR] if the public is to have any confidence in them."*

Mr G: "No amount of tinkering with the Rules will make a difference until the mind set within the Judicial Office changes... There should be a zero tolerance approach to cronyism, corruption, collusion etc - that is not currently the case. The judiciary should be setting the standard for others to follow. In that regard they should be making it as easy as possible to make complaints. Thereafter dealing with the evidence supporting the complaints efficiently, thoroughly and honestly and responding without fear or favour. This will enhance the reputation of the judiciary. The Rules appear to be a line of defence that are used to dismiss complaints. They are overly prescriptive and unnecessary in their present form."

Mr A: "In our justice system where, for example, judgements can hinge on interpretation of language used, where nuance can be very relevant, then I very much doubt if [our] experience in complaining against [name]... has anything to do with the Lord President's rules..

I hope you can sense my sense of deep injustice in this matter. In the absence of any acknowledgment of concern by the Lord President and the Judicial Office over this matter, in the absence of any change, there will always be the suspicion that both were protecting "their own". I fear rule changes will not be enough, but rather a change in culture at the Judicial Office."

Mrs O and Ms P: "The problems we have encountered trying to get these issues addressed has been very stressful and upsetting and we do not have any confidence in the procedures in place at the moment to listen to our complaint and rectify this for us or other members of the public facing the same ordeal."

Mr N: "...they really want to make changes to the handling of complaints in my own "EYES" it will make no scrap of difference as the complaints will only be considered 1 week only to be automatically dismissed and rejected three weeks later."

Most organisations recognise the value of complaints and welcome them. Addressing legitimate complaints and putting into practice any learning from them can help an organisation improve what it does and how it does it. Such an approach builds public credibility and respect. The intention of the Rules as drafted cannot be to reject as many complaints as possible, yet that is the impression that is created by both the existing and the proposed Rules.

The complaints statistics add weight to the public's feelings that their complaint will never progress through the system:

Mrs Q: "I had requested from the Judicial Office statistics in respect of the decisions on complaints about the judiciary under the 2011 Rules and received confirmation that during the period 28th February 2011 to 31st March 2012, 98 complaints were received, all of which were dismissed under one provision or another, only one reaching the stage of referral to a nominated judge for investigation, and this also subsequently dismissed as unsubstantiated. This 100% dismissal rate did not bolster my confidence in the Rules. I later requested the statistics for the following year, 1st April 2012 to 31st March 2013 and received the information showing that 116 complaints had been received during the period. Of these, 3 were withdrawn by the complainer, 2 were deemed to fall within your [the JCR's] own remit, 1 was investigated by the nominated judge and subsequently withdrawn by the complainant under Rule 17(4) and 2 were investigated by the nominated judge and subsequently resolved to the satisfaction of the complainer, leaving 108 complaints, all of which, again, were dismissed, save one, where the complainer's version of events was not challenged by the Judicial Office holder concerned, who offered an apology, and so the Lord President deemed that no further action should be taken against him. These combined statistics clearly demonstrate the near-impossibility of complainers achieving justice in a system where judges are judged by fellow judges."

The judiciary's public standing would be enhanced by a complaints system that genuinely welcomed complaints; that made it easy for complaints to be lodged; and that implemented learning from complaints. Even complaints that are not upheld can lead to lessons being learned. I have certainly found this to be the case in my reviews: even where I find that the Rules have not been breached, there may be constructive feedback to help improve the complaints process for others.

Inevitably any complaints system will attract some so-called 'vexatious' complaints, but that is not a good reason for constructing a complaints process that appears to regard all complaints as potentially frivolous and places obstacles in the way of legitimate complaints. Should a complaint be thrown out simply because it was made by email and therefore did not contain a postal address? Should a complaint be rejected because the complainer forgot to include the date of the alleged judicial misconduct? Clearly key information must form part of a complaint, but dismissing a complaint before first creating an opportunity for missing information to be provided does not give complainers the impression that their complaint is welcomed.

The Scottish Public Service Ombudsman (SPSO) *Guidance on a Model Complaints Handling Procedure* document says:

"Service providers that value complaints will take advantage of the opportunities that result from them. There are obvious lessons to be learned where service failures are identified and remedial action can be taken to ensure that similar mistakes are avoided in the future. However, close monitoring of service user complaints and feedback can highlight opportunities for operational improvements even where the service was initially delivered properly."

JCR Recommendation: Revise the style and language of the Rules so that the tone demonstrates that complaints are valued and that the judiciary wishes to learn from conduct complaints – including those that are not upheld.

Existing Rule 9 in particular (initial assessment – proposed rule 8) reinforces the impression that the purpose of the Rules is to reject complaints rather than encourage them. It says at 9.4.a. (proposed 8.4.a) that a complaint is to be dismissed if "it does not contain sufficient information to enable a proper understanding of the allegation to be achieved". A simple change to this rule – to hold such complaints open for a pre-determined period and to invite the complainer to supply further information – would create the more positive impression that complaints are welcomed. Members of the public are expected to be familiar with the lengthy, legalistic and complex Rules and to know in advance what information you require. This is unrealistic. At least give them an opportunity to understand what you need, and time to supply it, before dismissal.

Mr A: "And what prompted my approach to you, as the Reviewer, was more the attitude (or is it arrogance?) coming from the Judicial Office where valid points were completely ignored or dismissed."

JCR Recommendation: Revise the Rules to allow for complaints containing insufficient information (current Rule 9.4.a) to be held open for a defined period while the complainer is invited to supply further details

Was the old system better?

A small number of my consultees have responded that the old (pre-Rules) complaints system was better:

Ms H: "I would like to point out that the present Rules considering complaints against Judges and Sheriffs; and brought in by the former Lord President Hamilton, don't deal with a complainers complaint about conduct on the Bench."

Ms H then goes on to detail the case of a Sheriff removed from office for reasons of misconduct to illustrate the effectiveness of the system of investigation for alleged judicial misconduct that was in place before these Rules. This view is echoed by Mr E:

Mr E: "Before the judicial office was set up, such complaints got dealt with. In my view the old rules which apply [those prior to 2011] should be used."

Mr E then goes on to give an example.

Mr E: "Firstly, I would say that the Judicial Office for Scotland should be abolished. Since Lord President Hamilton set up this office and rules to deal with complaints against judges and sheriffs etc, the rules that have always [previously] applied have been ignored." [He then cites the same case as Ms H.]

I am not familiar with the system that was in place prior to the Rules, but notwithstanding the legislative requirement in the Act to have complaints rules, Rules are necessary to ensure that complaints are handled consistently, transparently and fairly. Having rules *per se* does not ensure this, but having the right rules can go a long way to guaranteeing a fair and proportionate process for complainer and complained against alike.

Accessible language

The purpose of these Rules is unclear. Have they been produced as a set of instructions for the Judicial Office/investigators to follow, or as a procedure for members of the public to adhere to when making a complaint or challenging the handling of their complaint? The two are not mutually exclusive.

If the Rules are expected to serve both purposes, they need to be written in plain English rather than legalese. I am involved with the Postal Redress complaints scheme, the Rules for which have been written in plain English and awarded the Plain English Campaign's 'Crystal Mark' for clarity. I would recommend that the Complaints About the Judiciary Rules undergo a similar process. It is not costly and results in much clearer, more accessible documents.

Arguably the guidance leaflet, which is written using clear language, is the document for public use. However, members of the public have found that the leaflet contains insufficient detail to enable them to challenge whether or not the Rules have been followed. When they refer to the Rules to mount their challenge, many struggle to understand them. Plain English Rules would solve this problem and make it easier for anyone to understand and challenge the process.

It is little wonder that people cannot understand what the Rules mean. In places they require cross-referencing to an Act of Parliament. For example, existing/proposed Rule 10.5 says:

"In forming his or her view as to whether paragraph (4)(f) or (g) applies, the disciplinary judge is to take due account of the extent to which the conduct concerned complies with any guidance relating to the conduct of judicial office holders issued by the Lord President under section 2(2)(d) of the 2008 Act which is relevant."

Straightforward, clear language would aid everyone's understanding. The Plain English Campaign says:

"In 1936, Fred Rodell, a professor of law at Yale University, argued that there 'are two things wrong with almost all legal writing. One is its style. The other is its content. That, I think, about covers the ground.'

Legal documents usually set out our rights and responsibilities. If we cannot understand the documents, we cannot exercise our rights and we cannot take responsibility.

It is possible to use plain English in legal documents. It does not mean sacrificing accuracy for clarity. The excuse that legal writing has to be complex to avoid misinterpretations does not stand up."

On my website I ask complainers seeking a review to tell me which Rule has been breached and why they believe that a breach has occurred, but I have not yet received a letter asking me to review the complaint with reference to the breached Rule(s) – no doubt because no one could understand the Rules sufficiently. If a review request falls within my remit, I will always accept it regardless of whether the complainer has been able to explain the nature of the breach because I take the view that if the Rules are so difficult to navigate, members of the public cannot be expected to find a route through them and it is my job – on their behalf – to check the handling against the Rules to either provide them with reassurance, or to refer a case to the Lord President if there has been a breach. However, I would hope that plain English Rules would lead to a reduction in the number of review requests I receive, as individuals would be able to carry out their own checks against the Rules.

If a future JCR requires details of alleged Rule breaches before accepting a review request, it makes the need for clear Rules all the more important so that members of the public can exercise their review rights.

During reviews there can be occasions when it is unclear which Rule was applied, when and why. That is not helped by the fact that I do not receive complete complaints files and sometimes have to resort to guesswork to understand which Rule was applied. Arguably, more detailed letters from the Judicial Office citing which Rule is being used would address this, but so too would a clearer set of Rules.

Organisation R: As a Public Body we were often confused as to which stage matters were and the use and meaning of language.

JCR Recommendation: Rewrite the Rules in plain English and get them Crystal-mark accredited (or equivalent).

Deadlines/response times

The only target timescales for complaints handling are set out in the guidance and relate to responding to correspondence. Timescales should form part of the Rules so that complainers have clear expectations about how quickly they can expect to receive acknowledgements, responses and outcomes at various key stages in the process. The benefit of incorporating timescales into the Rules is that the JCR can then make adverse findings against the Judicial Office and/or the disciplinary and nominated judges, which will in turn act as an incentive to observe deadlines.

Organisation R: The Complaints about the Judiciary (Scotland) Rules 2011 (The Rules) stipulate any complaint can consider conduct within a three month period from receipt of the complaint. The Rules are silent regarding responses to complaints themselves. As a public body that is accountable to the Scottish Public Services Ombudsman I find it strange that such accountability is lacking within the Rules. Clearly a complaint that takes 15 months to conclude is neither in the interest of the complainer or to whom the complaint refers to...If complaints are perceived as important then this would be reflected by them gaining priority over competing pressures. Timescales are obviously an element of fairness as undue delay is inherently unfair."

Mr C: "Also, if the complainant is to be subject to a time limit why should the other steps not also be subject to a time limit. Other complaint procedures make provision for a complaint to be determined within a prescribed timescale. Why should that not be the case here?"

JCR Recommendation: Include both fixed and target timescales within the Rules for various stages of the process (for example, how quickly complaints will be acknowledged or how soon after an investigation a complainer will be informed of the outcome).

'Investigations' and 'complaints'

Just two weeks into my role as JCR I wrote to the Judicial Office raising a query about the interpretation of the word 'investigation' in the context of the scope of my powers under section 30 of the Judiciary and Courts (Scotland) Act 2008 to review the handling of an 'investigation' and to report thereon. I requested clarification about the Lord President's interpretation of the word investigation in relation to my powers as the Judicial Complaints Reviewer. My concern was that the legislation allowed only investigations, and not complaints, to be reviewed.

Your predecessor's officials helpfully replied: "I am happy to confirm that the Lord President, without being able to bind his successor, does not believe that a narrow interpretation should be put on the word 'investigation' contained in the 2008 Act. His view is that it is intended that you be able to consider the handling of any complaint about the conduct of judicial office holders sent to the Judicial Office and not just those that reach the stage of a formal investigation. The issue arose because of the wording of the Rules and the way the Rules refer to an investigation. I can confirm that it was not the intention in writing the rules to have the effect of significantly reducing access to the Judicial Complaints Reviewer, which a narrow interpretation of the word investigation would undoubtedly do. It may be sensible

when we come to consider any necessary amendments to the Rules later in the year that we try to put this issue beyond doubt.”

There has been a change of Lord President since that was written and it would seem an opportune moment to clarify the situation in the Rules, specifying that the JCR has jurisdiction to consider a complaint from the point at which it was received by the Judicial Office for Scotland.

JCR Recommendation: Clarify in the Rules that the handling of an ‘investigation’ commences at the point at which the complaint is received by the Judicial Office and is not restricted to complaints that progress to formal investigation under the Rules.

Powers of the JCR

The JCR’s powers are detailed in the Act, not the Rules, and are a matter for our legislators. However, you may find it useful to have an insight into the views of complainers on this subject:

Mr G: “The office of the Judicial Complaints Reviewer should be given the power to intervene in any complaint as he/she sees fit - if they [the judiciary] have nothing to hide they have nothing to fear from such an arrangement.”

Mr B: “I would also suggest that if there is an adverse finding by yourself [the JCR] while investigating a complaint then the Judiciary must abide by any recommendations you make...I see no point in an investigator with no teeth to follow through or make decisions which the court can just ignore. In this day and age I think a person looking at complaints and how the complainer was dealt with must be able to consider the original complaint and this is one change I would push for. It is not satisfactory for an investigator not to be able to consider the actual original complaints. Lets face it how can you consider if the courts have dealt with a complaint properly without considering that complaint ?”

Mr J: “The judiciary is a public body funded by tax payers and as such should not be self-governing as there is no independence and does not ensure that justice is seen to be done. My understanding is that in England and Wales the Judicial Reviewer can request that action is taken e.g. a reinvestigation of a case. This should also be the case in Scotland to maintain integrity and ensure justice is done and seen to be done.”

Ms K: “I am sure you can appreciate that this is a difficult letter to write due to the emotions involved in my current situation...Through no fault of my own, I find myself having to attend court on a regular basis to try to protect my young daughter. Never at any time did I expect to be treated in the way I was by the judicial system.

*It is my understanding that although you [the JCR] were dealing with my complaint you have no authority in the matters you investigate. I could not help but feel disappointed in your response and wondered if all complaints about the judicial system are **futile**???*

Perhaps in your deliberations with the Lord President you could remind him that you are the voice of the people like me who are trying to protect their child and in doing

so are not only having their concerns ignored but being reprimanded for **voicing them!!!**

This letter is not directed as a criticism of you Ms Ali, more a suggestion that the Lord President takes stock of the role you hold and acts accordingly."

Mrs O and Ms P: "As we have previously stated, we totally appreciate your efforts in taking forward our complaint so far as you could and do understand the restrictions for you too... As we have said before, it would great if your investigation brought a positive outcome ensuring that these people were held accountable for their actions..."

Mr A: "Perhaps there is a need for a rule here. One which simply states that the Lord President should make all correspondence available to the Reviewer, regardless of the circumstances."

PART 2: The Proposals

In this section I have addressed the proposed amendments and any omissions, following roughly a numerical order.

Existing & Proposed Rule 4.2

The purpose of this rule is unclear. Is it to ensure that sufficiently senior staff deal with complaints?

JCR Recommendation: Rephrase rule 4.2 so that its purpose is clear – or remove the Rule if it serves no purpose

Existing & Proposed Rule 5

“Validly made” complaints

I welcome the proposed dropping of the term “validly made” for the reasons you have outlined in the consultation documentation.

Proposed Rule 5.2.c: Timing of alleged misconduct:

I have previously raised the issue of the need for dates to be provided and I welcome the fact that this has been addressed in the proposed rules. In one case I reviewed, the complainer sought an extension to the time limit but did not provide a date of the alleged misconduct. The Disciplinary Judge speculated on the date rather than asking for it. Requiring a date will ensure that this does not happen again.

In another review I undertook, no date was supplied. How can complaints be checked to ensure they are ‘in time’ if no date is required? The current Rules are silent on what happens in these circumstances. The proposed requirement to provide a date resolves this.

Existing Rule 5.2.c (Proposed Rule 5.2.d): Name and address requirements

I welcome the proposal to no longer require a telephone number. This is currently a requirement of the Rules, but Judicial Office staff helpfully take a pragmatic approach and accept complaints without one.

I have raised previously my concerns about Rule 5.2.c requiring dismissal of all complaints not bearing a postal address (and telephone number). There is no provision in the proposed Rules to hold a complaint open for a period while contact information is sought.

Many people are switching from post to email. When complaining by email, complainers sometimes inadvertently omit to include their postal address. This leads to their complaint being dismissed. One complainer was told: “It is the view of the Judicial Office that you have failed to comply with one of these requirements, namely you have failed to provide your address and telephone number. Your complaint is, therefore, not validly made and cannot be

considered at this time.” It would have been more positive had the Judicial Office simply asked for contact details so that they could consider the complaint. I would like to see complaints put on hold pending the supply of contact details rather than dismissed.

JCR Recommendation: Amend Rules to allow for complaints lacking a postal address (existing Rule 5.2.c/proposed Rule 5.2.d) to be held open for a defined period¹ while the complainer is invited to provide a postal address

Notwithstanding the comments above, I remain concerned that this Rule has a potentially adverse impact on homeless people, who may not have a fixed postal address. I previously suggested that an Equality Impact Assessment be conducted to ensure that no group is unnecessarily adversely affected by this requirement. It is unclear whether that has been carried out. I am pleased that the JO has taken a pragmatic approach to the Rules when dealing with complaints from homeless people. However, I would prefer to see some kind of safeguard included in the Rules to ensure that their needs will always be taken into account.

JCR Recommendation: Include a safeguard so that complaints can be accepted from homeless people with no postal address (existing Rule 5.2.c/proposed Rule 5.2.d)

I am concerned that requiring complaints to be made in writing is potentially discriminatory. Roughly 23% of the general Scottish public have low literacy skills (and it is estimated that the figure for prisoners in Scotland is 80%). Additionally there are citizens for whom English is not their first language. Equality impact assessing the Rules could be beneficial in highlighting any issues and enabling support provisions to be incorporated into the Rules.

JCR Recommendation: Include a provision that allows complaints to be accepted from those who cannot provide them in writing (current/proposed Rule 5.2)

Existing Rule 5.2.c (Proposed Rule 5.2.d): Restricting complaints to individuals

One consultee asked:

Mr C: “Why is the right to complain restricted to a person? This is in the primary legislation and there may be an interpretation provision somewhere which widens the definition. Otherwise why can’t other legal entities such as companies or partnerships complain?”

One of the first reviews I conducted was on behalf of an organisation and I have recently received another from a different organisation, so it is clear that complaints from other entities can be considered. It is only fair that organisations have the same rights to make a complaint about judicial conduct as individuals. In light of the above comment, I recommend that this be clarified in the Rules.

JCR Recommendation: Clarify the position in relation to complaints from organisations, companies and other entities so that it is clear that such complaints can be accepted under the Rules

¹ Where I have recommended that complaints be put on hold for a specified time, I strongly recommend that timescales are specified in the Rules rather than being left to staff to determine. This will enable consistency.

Rule 5.3 (existing and proposed): Documentation

I am supportive of the proposal to issue guidance explaining what information is required to make a complaint, including the need for specific details about alleged misconduct. Complainers will find such guidance helpful.

The Rules state that “A complaint document is to be accompanied by all documents within the control of the person complaining upon which the person seeks to rely in making the allegation.” People may have a large number of documents or be unsure as to precisely what may be required. It would seem unreasonable to dismiss an incomplete complaint without providing an opportunity for the supply of any missing documentation.

JCR Recommendation: Amend Rules to allow for incomplete complaints (existing & proposed Rule 5.3) to be held open for a defined period while the complainer is invited to supply missing documentation

Rule 5.4.a (existing and proposed): Documentation

This Rule states: “a document may be sent by any method which the Judicial Office has indicated to be an acceptable means of sending it”. There are limited ways of sending a document (post, email, fax, courier or by hand) and it might be more helpful if the Rules specified acceptable means (and perhaps unacceptable means, if there are any) – or explained where such a list can be found.

JCR Recommendation: Include in Rule 5.4.a (existing & proposed) a list of the means by which documents can and cannot be sent, or provide details of where the Judicial Office has published details of what constitute “acceptable means.”

Rule 5.4.b: Documentation

I do not understand what existing & proposed Rule 5.4.b. means.

Rule 5: Reminders

I have suggested above that complaints could be put on hold for a defined period to enable further information to be provided. In Northern Ireland I understand that as the deadline approaches, a reminder is sent to complainers to provide the additional information in order to avoid their case being closed. I would welcome this more proactive and engaged case management system in Scotland.

JCR Recommendation: Where complaints are put on hold pending further information, I recommend that the Rules require the JO to write to the complainer reminding them of the impending deadline and alerting them to the fact that that their case will be closed if the information is not received

Rule 5 (existing and proposed) and proposed Rule 8 (existing Rule 9): Appeals/review/escalation

There are numerous opportunities for the Judicial Office to dismiss a complaint (principally Rules 5 and 8/9). There is no provision in the Rules for a dismissal to be appealed (other than by requesting a review by the JCR). I have found cases during my reviews where complaints were dismissed that in my view should not have been. Arguably I can pick up such cases and feed them back through the system. However, I have no powers to require that a complaint be looked at again. Furthermore, not everyone whose complaint is dismissed requests a review.

As I have said in the past, some kind of appeal mechanism would enable challenges to be heard and handled in a consistent way.

Mr C: "The JO is given power to dismiss a complaint. What if it makes a mistake? I would suggest there should be provision for this to be reviewed by someone e.g. The disciplinary judge."

In case JCR0012, the complainer wrote to the JO asking for reconsideration of their decision. Neither Rules nor guidance set out an internal complaints 'escalation' or appeal process. I raised this with the JO, as it would be helpful for complainers to know what the procedure is in such circumstances. In some cases, complaints are reviewed by a more senior member of staff at the Judicial Office. In one case, there was a referral to the DJ. Is this appeal mechanism a formal part of the process, open to everyone, or an *ad hoc* response? It is fairer to have a consistent policy, set out in the Rules and published guidance.

The Judicial Office told me previously: "You have suggested that we set out a policy for internal review of complaints by a more senior member of staff. The Judicial Office will of course correct any administrative error in dealing with complaints if a complainer writes to us about it. However, we take care not to deal with matters which are for your office and would not want complainers to think that they must go through another stage before writing to you." I agree that complainers should not have to go through an additional hurdle before asking me for a review; I am merely suggesting that where complainers ask the Judicial Office to escalate their complaint internally, this be done on a consistent basis.

JCR Recommendation: Incorporate an appropriate provision in the Rules to allow for Judicial Office decisions to be appealed, escalated internally for review or other action as appropriate, so that all such requests are dealt with consistently

Existing Rule 6/Proposed Rule 8: Time limits

I agree with your proposed amendment to allow initial assessment of out-of-time complaints. There is no point in raising the hopes of complainers, and asking them to go to the trouble of making a case for exceptional circumstances, if it is known that their complaint will be dismissed thereafter. Your proposal is fairer to the complainer and has a subsidiary benefit of removing an unnecessary layer of bureaucracy for staff.

I do not understand why you considered only two time limits options, namely: extending the limit to one year, with no extensions; or keeping the time limit as is, but allowing initial assessment to be made before a case for exceptional circumstances is requested.

I agree that a time limit with no opportunity of extension – even if that time limit is a longer one – is a retrograde step. There can be many factors outwith the control of the complainer that can result in a complaint being made after the deadline, and it would seem unreasonable to make no provision for the circumstances to be considered before dismissing the complaint on time grounds alone.

Was consideration given to the obvious option of extending the current three-month time limit *and* continuing to allow extensions in exceptional circumstances?

Mr B: "I would like to see all time bars lifted with complaints against judges totally, and if they must remain then the time must run from the time you know you have a complaint."

Mrs L: "There must be no time limits for complaints against judges or the judiciary, cases must be raised at any time."

Mr C: "I have some reservations about the 3 month time limit. This seems very short compared to other complaint procedures where 12 months is more normal. Such a short period may also be difficult to operate in practice where the conduct complained of is not one-off in nature and some alleged misconduct occurs either side of the 3-month dividing line. What happens then?"

Mr J: "...there appeared to be nothing wrong with his [the Sheriff's] memory yet the excuse given for the three month time limit was that it would be difficult to have a clear recollection of events. The time limit is unreasonable and should be removed in order to stop travesties of justice and ensure that justice is done and seen to be done."

JCR Recommendation: Consider extending the time limit of three months, while maintaining the facility to extend this further where reasonable to do so.

In the case of JCR0012, the issue of ongoing judicial conduct was raised. The complainer wrote about a series of alleged misconduct actions spanning a long period of time. His reasonable view was that so long as the last of those actions was within the timeframe, the rest should be considered as part of that ongoing pattern of behaviour. The Rules – old and new – see it differently. They require that each time there is any alleged misconduct, it should be complained about within a three-month period. This complainer would have been required to make a series of complaints during the course of his court case.

Mr J: "The rules do not cover a pattern of behaviour over a period of time. In my case and complaints, I raised what I considered to be numerous serious issues that occurred over a period of time yet I was advised that the time limit was imposed from the date of each incident. The rules should therefore, include a clause to ensure that pattern of behaviour over a period of time is considered as one issue with no time limit."

It is reasonable that one-off incidents should be complained about in a timely fashion, but there may be an argument for a different approach where there is ongoing concerning behaviour. It might be that a potential complainer is concerned about an aspect of judicial conduct but lets it pass as a one-off. It then happens again, but the three-month deadline following the first incident has passed. The two incidents taken alone may seem insignificant, but taken together, they could show a concerning pattern. Or perhaps someone is involved

in an ongoing court case and is afraid to report alleged misconduct for fear of adversely influencing the outcome of the court case. Some may prefer to wait until after legal proceedings have concluded before filing a complaint.

In the past I have discussed this with the Judicial Office. They explained that where there is an ongoing pattern of concerning behaviour which is complained about when only one of the incidents remains 'in time', they would consider that 'in time' incident in the context of the previous 'out of time' pattern. In circumstances where a complainer puts off complaining until after legal proceedings have been concluded, this would be considered under exceptional circumstances. This practice seems reasonable, but enshrining such practice within the Rules – or, as a minimum, in the revised guidance – would provide more confidence that it will be applied.

I disagree that complaints that are both out of time and contain insufficient information should be dismissed at this point. A complaint should be put on hold for a specified time while the complainer is given the opportunity to provide further specific details and to put their case forward for exceptional circumstances.

JCR Recommendation: Clarify in the Rules (and in guidance) the situation regarding the consideration of ongoing alleged misconduct where not all of the events fall within the time limits.

JCR Recommendation: Amend the Rules so that complaints that are both out of time and contain insufficient information are put on hold for a specified time pending the provision of further specific details and a case for exceptional circumstances from the complainer.

Existing Rule 7/Proposed Rule 6: Allegations of criminal conduct

It is unclear whether there is a requirement on the Judicial Office to report such allegations to the relevant authority. As the wording stands, a member of the public may report, let's say, a sheriff for hitting his young child in the supermarket the previous day. This "may constitute a criminal offence" but the Rules require that staff suspend consideration until "the relevant prosecutor indicates that no criminal proceedings are to be taken". How is the relevant prosecutor to know of the allegations unless they are reported to the police? A complainer may not indicate whether such allegations have been reported to the police. Even if they have been reported, they may still be under investigation and not as yet conveyed to the prosecutor. What happens where no report has yet reached the prosecutor?

JCR Recommendation: Clarify proposed Rule 6 to specify what steps Judicial Office staff should take to report allegations of a potentially criminal nature and to check with the relevant authorities as to whether such allegations are to result in criminal proceedings

Existing Rule 8/Proposed Rule 7: Notification of JOH

I wonder whether it might be better to reverse the order of proposed Rules 7 and 8 so that the JOH is notified of the complaint *after* it has undergone initial assessment; otherwise there is a risk that they are informed one day of a complaint and the next day of its dismissal. By reversing the order, a complaint can be assessed and the JOH then informed either that

a complaint has been received and will be considered, or that a complaint has been received and will be dismissed. It removes possibly unnecessary worry for JOHs where complaints are dismissed, removes a layer of bureaucracy, and streamlines the process.

JCR Recommendation: Consider reversing proposed Rule 7 and 8 for the reasons outlined above

Existing Rule 9/Proposed Rule 8: Initial assessment

Existing Rule 9.5 and 9.7b/Proposed Rule 8.6

I have raised my concerns in the past about complainers not being given proper reasons for decisions. I therefore welcome the addition of the words “written reasons” in proposed new Rule 8.6 and believe that this will go a long way to helping complainers to understand why their complaint has been dismissed, or indeed to challenge the decision if the reasons provided are not robust.

Existing Rule 9.4.a/Proposed Rule 8.4.a and Existing & Proposed Rule 10.4.a

This Rule dismisses allegations which contain insufficient information to allow a proper understanding of the allegation to be achieved. I would like to see an opportunity for the complainer to supply sufficient information within a defined timescale before their allegation is dismissed.

JCR Recommendation: Amend Rules to allow for insufficiently detailed complaints (existing Rule 9.4.a/proposed Rule 8.4.a and existing/proposed Rules 10.4.a) to be held open for a defined period while the complainer is invited to supply sufficient information

Existing Rule 9.4.b/Proposed Rule 8.4.b: “Judicial decisions” and definitions

I welcome the proposal to define the term “judicial decision”, which is not understood, particularly when it is linked with the terms “judicial case management” and “judicial case programming”. The definition provided in the revised Rules is not sufficiently clear and examples would be helpful to illustrate what is meant.

The Rules rightly disallow complaints that concern judicial decisions. However, issues have been raised about the definition of a judicial decision, the ethical factors that may affect judicial decision, and the fact that not all judicial decisions can be appealed against, leaving so-called “vexatious litigants” with nowhere else to go even when they believe that the judicial decision was influenced by bias.

Mr C: “The definition of judicial decision includes matters that cannot be appealed e.g. decisions about court programming. If such decisions are outwith the complaints procedure and cannot be appealed under judicial process what recourse does someone have if they think an error has been made?”

Mr D: “I was very disappointed by what I regard as persistent misapplications of the Rules by the Judicial Office in response to my complaints. The misapplications were in falsely holding that my complaints were about decisions when in fact my

complaints were about alleged unethical conduct. This approach by the Judicial Office would only be a logical position if there were no ethical issues involved in the making of the decisions in question, as a fair reading of the Statement of Principles of Judicial Ethics for the Scottish Judiciary would confirm.

In order to prevent such misapplications of the Rules in future I propose that Rule 9(4)(b) should be amended to the following:

'it is about a judicial decision or judicial case management or judicial management of court programming in respect of which no allegation of unethical conduct has been presented;'

Existing and Proposed Rule 10(6)

I have raised this matter previously following reviews in which I have found that no reasons have been provided for decisions to dismiss complaints at this stage. For example, in the case of JCR0042 I was critical of the fact that the complainer was told that her complaint was being dismissed but given no indication of why, other than the reference to the Rules. I raised this with the JO, who explained that they would pass my feedback to the Disciplinary Judge and ask him to consider doing so in the future.

Mr C: "Should this not require the disciplinary judge to provide reasons for dismissal? Rule 8 requires the JO to give reasons and it seems difficult to justify why a member of the judiciary should not be subject to a similar requirement."

JCR Recommendation: In the interests of natural justice, written reasons should be provided to complainers when their complaint is dismissed under Rule 10(6) and the Rules should reflect such a requirement.

Existing and Proposed Rule 10.8 and 10.9: Fitness for Office

There appears to be no provision here for informing the JOH or the complainer that the allegation is being considered by the LP as a possible fitness for office issue, nor of providing reasons to the two parties if it is decided that it was not a fitness for office issue.

JCR Recommendation: Amend Rules 10.8/10.9 so that both parties are informed when a complaint allegation is being considered as a fitness for office matter, and given written reasons if it is decided that the matter was not of that magnitude.

Existing and Proposed Rule 11.6

I agree with the suggestion that informal resolution should be an option at any stage after a complaint is passed to the Nominated Judge. If such an option is acceptable to the complainer, and spares them the time and stress of participating in a wider investigation, then it seems a sensible proposal.

There may also be benefit in building in the ability to refer matters that do not amount to misconduct onwards to be handled pastorally – as happens in England and Wales. One case I referred to you was about a woman who felt that the judge had not taken her needs as a disabled woman with complex medical needs into account. If it was found after investigation that the alleged conduct was not misconduct but a training matter, then it would be appropriate that pastoral advice and training be given to the judge rather than the case closed and no action taken. The latter course of action would leave the judge likely to repeat any shortcomings when presiding over other cases involving people with disabilities. The Rules do not accommodate the giving of pastoral advice.

JCR Recommendation: Consider incorporating a pathway within the Rules that allows for the provision of pastoral advice in cases where a JOH has not been found guilty of misconduct, but is in need of advice and guidance.

Existing and Proposed Rule 14: Review by Disciplinary Judge

I am unsure of the purpose of the DJ reviewing the NJ's determinations and having the authority to require the NJ to reconsider any of them and to resubmit his or her report. It could be seen that such a provision allows the DJ to exert influence over the NJ to change his or her findings. Until I understand why this provision is included, I cannot comment. In any event, there is a need for the Rules to make clear the purpose of such a power.

JCR Recommendation: Clarify the intent behind Rule 14, which gives the disciplinary judge the power to require the nominated judge to reconsider their decisions.

As the Rules (16) do not require that a copy of the report must be given to the complainer or the JOH (although this *may* happen in the case of the JOH – see below), there is a lack of transparency. A complainer is told the final outcome, but will be unaware of the content of any investigation reports, any changes made to the original determination or the reason for them. It is the same with JOHs, unless they are sent the report under Rule 15.5. This is very concerning, as the complaints process should be fair and transparent.

Existing and Proposed Rule 15: Investigation reports

Rule 15 relates to situations where a complaint has been investigated and a report produced, and the Lord President proposes to take disciplinary action. The LP can, but is not required to, share a copy of the report with the judicial office holder (JOH) who is the subject of the report. It is difficult to see how a JOH could have a fair opportunity to make representations without having seen the report. While I acknowledge that the Rules require the LP to provide “such information ... as he or she considers appropriate”, which could include the report, it seems fair and proportionate, and in the interests of natural justice, that the report *always* be provided.

Mr C: “I think as a matter of principle the investigation report should be disclosed. I can’t think of a good reason why it should not. If the argument is the report includes policy advice to the LP on any sanction this part could be separated out. Otherwise the process appears closed.”

JCR Recommendation: Amend Rule 15 to require the Lord President to share the investigation report with the JOH who is the subject of the report, in cases where the LP proposes to take disciplinary action, so that the JOH has a fair opportunity to make representations.

Existing and Proposed Rule 16: Notification of Outcome

I reviewed a case a few months ago in which a complaint was investigated (JCR00026) but the final report was not shared with the complainer. All they received by way of explanation was this:

“a) the underlying facts of the complaint as framed have not been established; b) there has been no misconduct on the part of the sheriff; c) the behaviour of the sheriff, on the occasion in question, was entirely commensurate with proper and practical judicial conduct; and d) having regard to the nature of the allegation, on the balance of probabilities, the complaint is vexatious.”

This is far from transparent, as only the outcome is conveyed but no indication as to the reasons for it. Had the complainer been provided with the report, he would have had the necessary information to satisfy himself that his complaint had been thoroughly investigated, and would have understood the reasons for the conclusion. It may be that where certain complaints are not upheld, there may be good reasons for not issuing the whole report to the complainer – but there is no reason why a summary of the report could not be provided in such cases.

Organisation R: It would appear that inherent within the Rules is a lack of transparency. Complainers do not get access to information, including the reports of The Investigatory and Disciplinary Judge.

The Rules say that the “Judicial Office’s letter is to contain or be accompanied by such information as the Lord President considers to be appropriate for the purpose of giving the person complaining a fair understanding of the matters mentioned in paragraphs (2)(a) and (b).” Put simply, the Rules require that the outcome and any action is relayed, but there is no requirement to provide any reasons. Surely it is necessary to provide complainers with an

explanation of how that outcome was reached? Natural justice and transparency demand that sufficient reasons and information be provided.

The SPSO's guidance on a model complaints handling procedure assumes that complainers will receive a full explanation of how any conclusions were reached. *"At the end of the investigation, the service provider's decision may be formally communicated to the service user face-to-face or in writing. Responses should be based on the facts established by the investigation and a full explanation should be given about how those facts were used to inform the conclusions reached."*

Under the Rules, even in the case of complaints that are upheld, there is no requirement to share the report with the complainer.

JCR Recommendation: Amend Rule 16 to require the Lord President to share the investigation report with the complainer in all cases where the complaint is upheld.

JCR Recommendation: Amend Rule 16 to require the Lord President to share the full report, or as a minimum a summary of it (if there are good reasons for not sharing the complete report) in cases where the complaint is not upheld.

Existing and Proposed Rule 16(5): Disclosure

I am concerned that the provisions contained in existing/proposed Rule 16.5 are too wide. The Lord President is allowed to "publish or disclose to any person such information concerning the whole matter (including the identity of the person complaining or the judicial office holder who is the subject of the report or both) as he or she considers to be appropriate." In this way, the identity of a complainer who has been wronged may be revealed, thus potentially deterring future legitimate complaints from others; equally, the identity of a JOH who has been found to be innocent of wrongdoing may also be disclosed.

There will be occasions when it is appropriate, subject to data protection legislation, to disclose details of upheld complaints to, for example, the Judicial Appointments Board.

Furthermore, there are strong arguments for publishing – as a minimum – anonymised cases where misconduct has been found. In England and Wales the names of JOHs who have been found guilty of misconduct are also published, reflecting the Lord Chancellor and Lord Chief Justice's view that such publication improves "transparency and openness of the complaints system"². This is also the case across the UK, including Scotland, for other professionals such as doctors and dentists. It is a more transparent way of handling misconduct and builds public trust and confidence in the complaints system.

Rule 16's wording is too wide and unspecific as currently drafted. Despite the breadth of disclosure actions that this Rule allows, it cannot be used to inform me of the outcomes of cases which I have referred to the LP following a case review.

Mr C: "This gives the LP power to disclose personal information. I would query whether this complies with data protection requirements. As I understand it this is not a judicial process so is it not subject to over-riding DPA requirements."

² Office for Judicial Complaints annual report 2012/13

JCR Recommendation: Amend Rule 16.5 to specify circumstances in which names of complainers, JOHs who have been the subject of complaints, or investigation reports may be published or otherwise disclosed, to ensure compliance with necessary legislation and appropriate confidentiality.

JCR Recommendation: Consider incorporating a Rule that allows the publication of the details of upheld cases, including possibly the name of the JOH (but not the complainer).

Existing and Proposed Rule 18: Absence of a complaint

I wonder if there is a typographical mistake in proposed Rule 18.2.b as I assume that the judicial office holder would be informed that there was to be an investigation, even in the absence of a complaint.

Existing and Proposed Rule 19

I welcome the suggestion that complaints under investigation at the point at which a JOH resigns or retires could still be concluded, although the suggestion is at odds with what I was told previously when I raised these concerns. I was informed that the Rules merely reflect the legislation, which does not allow the investigation of complaints against those no longer holding judicial office. Is the proposal a 'work-around' solution to the restrictions imposed by the legislation, or was I misinformed?

Mr J: "In my case, the Sheriff retired but is still presiding over cases in the Sheriff Court... Regarding Page 11 - Pt. 33 of the Consultation Paper, Investigations should not end because the office holder resigns or retires as this does not allow for justice to be done where there is incompetence or mistakes have been made. Judicial Office Holders should be held accountable for their actions regardless of whether they have retired or resigned."

The proposed Rule states "except where the Lord President decides otherwise", consideration will cease. It would be helpful if the Rules gave an indication of what circumstances might lead the LP to decide otherwise. The Rules consultation document suggests that "serious cases" would be considered.

JCR Recommendation: Amend Rule 19 – or the guidance – to clarify the circumstances in which the Lord President might continue to investigate complaints against JOHs who have retired or resigned.

Complaints about the Lord President

The Judiciary and Courts (Scotland) Act 2008, at Section 35, allows for consideration of matters concerning *fitness for office* of the Lord President. However, as you know, there is no procedure for members of the public to make conduct complaints about matters that are not of a removal-from-office magnitude and it is also not clear from published guidance what the existing process is for the public to raise complaints that *are* of that magnitude.

You are aware that I took senior counsel's opinion on this matter, which said: "*These Rules are stated to apply "in relation to complaints about the conduct of the following judicial office*

holders”, which list includes “judges of the Court of Session” (rule 2(1)(a)). This last term is not defined by the Rules (see rule 20), but would normally include the Lord President of the Court of Session. However, it is clear from the terms of the Rules, when read as a whole, that as made they cannot operate in respect of complaints about the judicial conduct of the Lord President. The Act and the Rules proceed on the basis that the Lord President is in charge of the system, as head of the judiciary in Scotland. The Rules do not contain any procedure for the handling of a complaint that relates to the Lord President himself: see e.g. rules 12(2)(b) and 15(2)...”

JCR Recommendation: Amend proposed Rule 2(a) to define what is meant under the Rules by “judges of the Court of Session” i.e. that it does not include the Lord President.

Counsel’s advice went on: “... The Judicial Office for Scotland has issued guidance (last revised in August 2011) entitled “Complaints about Judicial Conduct: Guidance Leaflet”. Like the webpage on the Judiciary of Scotland website entitled “Complaints”, this leaflet does not suggest that complaints may not be made in relation to the conduct of the Lord President, and it does not in terms address the difficulties posed by the investigation and determination of such complaints under the Rules to which it refers. Like the Judiciary Scotland website, the Scottish Government webpages direct complaints against individual judicial office holders to be made to the Judicial Office for Scotland.”

JCR Recommendation: Amend proposed Rules so that it is clear to complainers how complaints about the Lord President may be made. Also provide further information in the guidance and on the website about this.

The opinion continued: “removal from office.complaints may in principle be received by the Judicial Office in relation to the Lord President, and would be passed on to the Scottish Government where appropriate, for consideration as to whether the First Minister should exercise his powers under section 35... If the Rules were to make specific provision for the receipt, handling and onward transmission of such complaints, then on the present wording of the Act the Judicial Complaints Reviewer would have some role in reviewing the handling of the complaint by the Judicial Office up to the point of transfer to the Scottish Government.”

JCR Recommendation: Amend proposed Rules to allow for complaints about the conduct of the Lord President to be received, assessed and passed on to Scottish Government for further consideration.

APPENDIX

The following letter, personalised to each recipient, was issued in October 2013.



The Stamp Office, 10-14 Waterloo Place, Edinburgh EH1 3EG
Email: complaints@judicialcomplaintsreviewer.org.uk

[address]

[date]

[salutation]

YOUR VIEWS WANTED: Proposed Changes to the Complaints Rules

I am writing to you, and everyone else who has asked me to conduct a review of how the Judicial Office handled their complaint, because I would like to hear your thoughts.

Your original complaint was handled by the Judicial Office according to a procedure called the Rules (Complaints About the Judiciary (Scotland) Rules 2011), which were drawn up by the Lord President. He is currently consulting on changes to these Rules. I have been invited to respond to his consultation. Rather than simply put forward my own views, I would like to hear from people who have actually made a complaint under these Rules – people like you.

I am completely independent from the Judicial Office, the Lord President and Government. I am genuinely interested in hearing from you and in representing the views of others when I formally respond to this consultation.

You can send me your views by post or email on your experiences of making a complaint. I will personally read every response sent in. I need to hear from you no later than **30th November** to allow time for me to consider the responses.

Alternatively, you may wish to see the Lord President's consultation yourself. This is available online at the following address:

[http://www.scotland-judiciary.org.uk/27/1133/Consultation-on-proposed-amendments-to-the-Complaints-About-the-Judiciary-\(Scotland\)-Rules](http://www.scotland-judiciary.org.uk/27/1133/Consultation-on-proposed-amendments-to-the-Complaints-About-the-Judiciary-(Scotland)-Rules)

If you wish to see it but cannot get online, you can get a copy direct from the Judicial Office for Scotland, as they are running the consultation (address below). If you wish to send your comments direct to the Judicial Office rather than to me, views and comments should be submitted by **16 December 2013** by email to: judicialofficeforscotland@scotcourts.gov.uk; or in writing to:

Complaints Rules Consultation, Judicial Office for Scotland, -3/R12, Parliament House, Parliament Square, Edinburgh, EH1 1RQ

Thank you in advance for your help and I look forward to hearing your views.

Yours sincerely,

Moi Ali
Judicial Complaints Reviewer

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RESPONDENT INFORMATION FORM

Please Note this form must be returned with your response to ensure that we handle your response appropriately

If you hold judicial office, please specify:	
--	--

Title (Mr, Ms, Sheriff etc.)	Mrs
Surname	Kenneil
Forename	Caroline
Postal Address	██████████
	██████
	██████████
Phone Number on which we may contact you.	██████████
Email address at which we may contact you.	████████████████████

Confidentiality

If you would like your responses to be treated as confidential please indicate this clearly. Responses from those who reply in confidence will only be included in numerical totals and names and text will not appear in the list of respondents.

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Please return the completed respondent information form and your response to the
consultation by **16 December 2013**

by e mail to: judicialofficeforscotland@scotcourts.gov.uk; or

in writing to: Complaints Rules Consultation
Judicial Office for Scotland
-3/R12, Parliament House
Parliament Square
Edinburgh
EH1 1RQ

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Consultation Questions

Dear Drafters for the Regulatory rules of the Judicial Office Scotland.

The questions related to the Judiciary. But the Judicial Office for Scotland regulates all court staff, therefore also court appointed agents of every sort. A judge can only be as good as the information with which he is presented. Therefore in light of the requirement for the court systems and the legal machinery of Scotland itself to implement the EU Charter of Fundamental Rights and the UN Convention against corruption, the rules require to look behind the scenes of some of the complaints to see their source, which may only manifest in the judiciary. For the rules to be written up so as to ignore problems of injustice is to set up a flawed and non compliant legal system.

It is clearly the case that many valid complaints both pre and post the Judicial Office existing regulations have failed to bring justice and one of the reasons is that parties do not have adequate legal assistance. The proposed regulations also leave black holes so that the Judicial Office staff can be seen to have ticked all their boxes correctly and valid complaints with fall to be dismissed. It does not require to be emphasised that this is in the interest of the professions who mainly draw up the rules, as it precludes them from taking responsibility for a raft of failures and possibly wrongful gains. Neither has it escaped the consumer that many 'scams' these days involve omission by skilled operators acting on the vulnerability of un-informed or people who have no level playing field. The purpose of the regulatory rules is specific to the good and efficient fair administration of justice, transparent in it's method and timely in accordance with primary law, national, EU and international. They therefore required to be joined up to the other viable and fair routes available or otherwise to the consumer for redress.

When it is clear that the system is biased to protecting the interests of the very gate keepers of the law against the interests of consumers, then automatically it can be shown that the wrong matters are being considered, and decisions made which are possibly ultra vires and non corruption compliant. The persons drafting the new rules should approach this from the view point of un-informed consumers, possibly vulnerable consumer, who do not currently

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have a level playing field, due to lack in knowledge, experience and financial resources, they also blocked from other regulatory bodies and isolated from groups of professionals who can form comradely associations, both professionally or otherwise.

Fraud is on the increase. Worryingly it is not being prosecuted in Scotland. This is clearly not because it does not exist, as they can be seen to exist. Fraud requires professional knowledge, and the wider current rules of all the regulatory and prevention systems do not investigate, detect, deter or punish fraud. Complex fraud utilises omissions as well as commissions. Due to the vulnerabilities caused by age related matters, and an increase in such matters as autism, mental ill health etc, there is an increasing number of the population who will require to put trust in professional help. To ensure the court is not used as a forum for complex fraud, the rules require to have no built in loop holes as it is simply a matter of time prior to the wrong person being employed for the regulatory jobs. Further under the proper purpose and function of their job, the regulators all require to ensure they and their job description enables them to recognise, manage and be free from all conflicts of interest and take immediate action upon spotting such, or failing which self report the employee, temporary or otherwise to proper authorities who can be guaranteed to act in the interests of Justice and importantly the consumer. It is only upon these grounds of safety, based upon proper regulation, ensuring impartial, independent and equitable justice, delivered with integrity that Scotland and its government can ask the world to bring it's inward investment or matters for adjudication. To do so now would be to misrepresent matters due to the many complaints concerning black holes in accessing impartial or any legal assistance and black holes between the diverse regulatory bodies and their rules.

1. In your opinion, is the proposed rule 5 correctly framed?

	YES
X	NO
Please give reasons for your answer	
1. Rule 5 (3) is impractical as there may be several hundred documents.	
2. In the event that the court and court officials have been alerted to breaches amounting to	

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serious loss or mal administration of justice, where in it appears corruption has taken place, which has finally impacted upon the Judicial decisions, the Judicial Office has no alternative but to dismiss the case.

Currently the Judicial Office advises the damaged party to return to court.

The Court may have lacked all Bangalore Principals.

There is no signed confidentiality agreement between the Judicial Office and the complainer. In this event the damaged party is required to show all his/her arguments, where as the court provides no timeous arguments, is backed by powerful insurers and there is no level playing field. This is a conflict of interest.

This is not idle slander as there is evidence to support a collective of court officials acting so as to alter the administration of justice. The source of the problem may not lay with the judiciary, but could involved judicial decisions.

Such activities are contrary to the signed up EU Charter and UN Convention.

As the court is the final arbiter:

The Judiciary and Courts (Scotland) Act 2008 require that there should be no alternative but to enforced the EU Charter in relation to a fair trial and hearing, and in regards to taking care of other peoples tangible and intangible rights. All rules require fully taking account of anti-corruption compliance law. To this end the judiciary require to have regard as to how parties may be being treated by the rest of the legal system.

2. Do you agree with the new position of the rules in relation to criminal proceedings and notification of the judicial office holder (proposed revised Rules 6 and 7)?

x	YES
X	NO
<p>Please give reasons for your answer</p> <p>Yes, generally, although there may be the specific instances where due to organised crime this rule should be capable of being fully set aside.</p> <p>The Judiciary and Courts (Scotland) Act 2008 require that there should be no alternative but to enforced the EU Charter in relation to a fair trial and hearing, and in regards to taking care of other peoples tangible and intangible rights. All rules require fully taking account of anti-corruption compliance law. To this end the judiciary require to have regard as to how parties may be being treated by the rest of the legal system.</p>	

3. Do you agree with the form of the proposed revised rule 8, which now incorporates the time limit alongside the initial assessment by the Judicial Office?

	YES
x	NO
<p>Please give reasons for your answer</p> <p>8 (b), 8 (c) The rules are ambiguous while also being tightly framed that all matters can be</p>	

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said to fall ultimately into the “net of a judicial decision, or have been dealt with under a different rule. This precludes all investigation of the lack of all or one of the required Bangalore Principals. Such a rule is ultra vires vis a vis the EU Charter.

8 (5) Legal professionals and the Legal Entity of the court is by profession fully versed with the law, or should be fully versed, know how to circumvent it through loop holes, or lack of regulation. They have the power to ensure that the damage is not perceived until a later date. Given that court agents have immunity, currently there is no regulation whereby they will automatically be disciplined for contempt of court.

8 (5) (c) There have been historic valid complaints concerning the disciplinary judge refusing to investigate valid complaints, and there is no supervision currently capable of overriding this failure which appears to be attributed to a conflicts of interest. The disciplinary Judge requires to apply transparent and fair tests prior to refusing to investigate a complaint

8 (6), I agree that the Judicial Office should provide reasons as to why the complaint is dismissed. However this is a black hole as the responses require to be commensurate, directly responding to the complaints, as past answers from the Judicial Office have lacked transparency, evading the issues, given the impression that the complaint is a false allegation for a variety of possibilities. This leaves an un-level playing field and smacks of conflicts of interest and lack of impartiality. Thus this rule is applied, but leaving the intention unfulfilled, except on paper, and not applied in practice for the working purpose of the rule.

The Staff do not currently have any anti-corruption or conflict of interest rules. As such the staff have inadequate training as to the mandatory statutes to which Scotland is a signatory. This applied to the application of each rule. Such rules leave the court non corruption compliant, and as such can be organised to be used for the unregulated gateway to organised crime. This has vast socio economic repercussions on Scotland as well as causing unjust individual damage.

The Judiciary and Courts (Scotland) Act 2008 require that there should be no alternative but to enforced the EU Charter in relation to a fair trial and hearing, and in regards to taking care of other peoples tangible and intangible rights. All rules require fully taking account of anti-corruption compliance law. To this end the judiciary require to have regard as to how parties may be being treated by the rest of the legal system.

4. Should the words ‘judicial case management or judicial management of court programming’ be removed as in revised rules 8(4)(b) and 10(4)(b) and a definition of ‘judicial decision’ including those two types of decision be inserted into the interpretation section (at section 20)?

x	YES
	NO

Please give reasons for your answer

These words require by law to be removed as they do not comply with the EU Charter and subsequent directives and transpositions into national law, and can for instance mean that the court is guilty of money laundering. There is no option to requiring the courts and the

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legal regulatory bodies from being anti-corruption compliant, therefore avoiding all avenues to material conflicts of interest. See response 3

The Judiciary and Courts (Scotland) Act 2008 require that there should be no alternative but to enforced the EU Charter in relation to a fair trial and hearing, and in regards to taking care of other peoples tangible and intangible rights. All rules require fully taking account of anti-corruption compliance law. To this end the judiciary require to have regard as to how parties may be being treated by the rest of the legal system.

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5. Should there be a separate rule for 'on-going proceedings', as in the proposed revised rules at Rule 9?

	YES: This is dependent upon the application of other rules
	NO: This is dependent upon the application of other rules
<p>Please give reasons for your answer: My family were been informed that no investigation could take place while matters were on-going in court. There had also been systemic failures by the Auditor of Court and the Accountant of court to alert the Judge, although we had done so to no avail.</p> <p>The Principal and Lord President requires to be fully informed of the prevailing court culture, but also of individual breaches. No to do so results in a loop hole to enable the court to remain non corruption compliant, during which time a great deal of damage can be done, which may be irreversible.</p> <p>We do not know if access to the Lord President should result from a separate or incorporated rule.</p> <p>However, it is not in the interest of the administration of justice that wrong turnings continue, so that the sooner a breach is turned the better for the court, parties and the administration of justice.</p> <p>Black listing: It is imperative that matters are brought to the attention of the Lord President acting as Principal and as the ultimate regulatory body, as it is well established that many complainants, particularly when complaining about the conduct and service of a professional, have been black listed from legal assistance. This is a systemic problem of the entire 'legal set up' of the most dangerous kind for the well being of Scotland.</p> <p>Scotland is a signatory to laws which require that the legal administration of Scotland is compliant at all times with these higher rules. Any regulatory rule which deflects from this intention and purpose is a non-sequatur, and will in time require to be re-written.</p> <p>The Judiciary and Courts (Scotland) Act 2008 require that there should be no alternative but to enforced the EU Charter in relation to a fair trial and hearing, and in regards to taking care of other peoples tangible and intangible rights. All rules require fully taking account of anti-corruption compliance law. To this end the judiciary require to have regard as to how parties may be being treated by the rest of the legal system.</p>	

6. Proposed revised rule 17 (2) provides that if person complaining fails to respond 'within a reasonable period' the complaint is deemed to be withdrawn. What in your view would be a 'reasonable period'?

No complaints should not be dropped. If there are valid complaints it is in the interest of the administration of justice that the complaint is addressed and rectified, or until redress is given.	
	<p>Please give reasons for your answer</p> <p>The current rules have been drawn up by members of the legal profession for the protection of consumers complaining about this very profession. Complainers are often blocked from legal assistance due both to practice and from a block to outside independent regulation</p>

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bodies. Complainants can be ground down. Complainers have been known to develop very fragile states of mind due to unfair treatment and no access to redress. There are many elderly people and others requiring the assistance of Trustees and curator bonis. A breach of the law, negligence or fraud should not be dismissed due to a complainer dropping his / her complaint. There are many reasons why someone may drop a valid complaint, and if a perpetrator is aware he /she can grind a party down such a rule will give them incentive to do so. The EU Charter and UN Conventions require to be implemented whether or not people complain. Once the court 'system' sees a breach then the court is duty bound to put the matter right. Prevention is therefore better than the cure. If the rules leave a black hole for a cure, by omission, then this is an open door to breaches against vulnerable people and consumers.

The rules require to be written to protect consumers not to protect professionals in the breach of trust and codes of professional conduct.

It is crucial that these rules are flexible and proportionate to the parties, the circumstances and requirements of justice.

The Judiciary and Courts (Scotland) Act 2008 require that there should be no alternative but to enforced the EU Charter in relation to a fair trial and hearing, and in regards to taking care of other peoples tangible and intangible rights. All rules require fully taking account of anti-corruption compliance law. To this end the judiciary require to have regard as to how parties may be being treated by the rest of the legal system.

6. Should there be provision that a serious complaint which has reached investigation at the point a judicial office holder has left office may proceed to determination?

x	YES Definitely
	NO

Please give reasons for your answer

A rule which enables a professional to breach his codes of conduct, where he possibly made a gain, or passed on a gain, and then is allowed to retire is an automatic breach of the EU Charter and UN Convention against corruption. Such an approach can allow for organised crime to plan, undertake and complete ultra vires actions knowing ahead of time that the court official can retire to take up another post. This is wholly unsatisfactory. Redress is mandatory, so is prevention, detection and there to cure for the damaged person. There is no built in prevention in such an approach.

It is an abuse of power that a person working for the very system of justice can evade justice simply because he was once a trusted member of the 'justice' team. This is against the national interest, and s recognised as such.

Such an approach opens the door to crime.

The Judiciary and Courts (Scotland) Act 2008 require that there should be no alternative but to enforced the EU Charter in relation to a fair trial and hearing, and in regards to taking care of other peoples tangible and intangible rights. All rules require fully taking account of

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anti-corruption compliance law. To this end the judiciary require to have regard as to how parties may be being treated by the rest of the legal system.