

COMPLAINTS ABOUT THE JUDICIARY (SCOTLAND) RULES 2024

Made - - - -

31 August 2024

Coming into force - -

1 September 2024

The Lord President of the Court of Session makes these rules under the powers conferred by section 28 of the Judiciary and Courts (Scotland) Act 2008.

Introductory provisions

Citation and commencement

- 1.—(1) These rules may be cited as the Complaints about the Judiciary (Scotland) Rules 2024.
- (2) They come into force on 1 September 2024.

Interpretation

2. In these rules, unless the context requires otherwise—

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

“a tribunal” means a Fitness for Office Tribunal constituted by section 35 of the Judiciary and Courts (Scotland) Act 2008, section 21 of the Courts Reform (Scotland) Act 2014 or section 71 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007;

“disciplinary judge” means a judge of the Inner House of the Court of Session appointed by the Lord President to supervise the operation of these Rules and carry out the functions specified by the Rules;

“nominated judge” means a judge of the Court of Session, the Chairman of the Scottish Land Court or a sheriff principal;

“judge” means—

- (a) a judge of the Court of Session;
- (b) a former judge acting as a judge through re-employment (section 43(1)(b) of the 2008 Act);
- (c) the Chairman of the Scottish Land Court;
- (d) a temporary judge ;
- (e) an Appeal Sheriff;
- (f) a sheriff principal;
- (g) a temporary sheriff principal;
- (h) a sheriff;
- (i) the Deputy Chairman of the Scottish Land Court;
- (j) a summary sheriff;
- (k) a member of the Scottish Land Court;
- (l) a person acting as a sheriff or summary sheriff through re-employment (section 43(1)(c) of the 2008 Act);
- (m) a part-time sheriff;
- (n) a part-time summary sheriff;
- (o) a justice of the peace;

(p) a judicial member, as defined in section 19 of the Tribunals (Scotland) Act 2014, of the First-tier Tribunal for Scotland or the Upper Tribunal for Scotland;

“a judicial decision” includes but is not limited to: 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 or tribunal programming;

“judicial complaints reviewer” means a person appointed by Scottish Ministers to review the handling of complaints investigations by the Judicial Office for Scotland into members of the judiciary, to ensure that they have been dealt with in accordance with the Rules.

An overview of the complaints process

Purpose, principles and duties

3.—(1) These rules set out the procedure for making complaints about the conduct of judges and for the investigation and determination of such complaints.

(2) The purpose of an investigation is to determine—

- (a) whether there has been misconduct on the part of a judge and, if so
- (b) what, if any, disciplinary action is to be taken against that judge.

(3) An investigation is to be progressed expeditiously and efficiently, with as few delays as possible.

(4) The complainer and the judge must co-operate with the Judicial Office and the nominated judge to further the investigation.

(5) A complainer must not make allegations or statements which have no factual basis, are misleading, or are vexatious.

(6) The complainer and the judge must comply with any time limits set in these rules or by the Judicial Office or the nominated judge.

(7) If the judge refuses to participate in the investigation process, the complaint is to be progressed without their input.

What do those involved in the process do?

4.—(1) The Judicial Office—

- (a) receives and deals with complaints about judges;
- (b) carries out a first sift of complaints;
- (c) dismisses or pauses a complaint or refers relevant complaints to the disciplinary judge.

(2) The disciplinary judge is appointed by the Lord President to consider complaints that have not been dismissed by the Judicial Office and they—

- (a) may pause a complaint because of ongoing proceedings;
- (b) carry out a second sift of complaints and dismiss those which do not pass that sift;
- (c) decide whether a complaint calls into question the judge’s fitness for office and, if it does, inform the Lord President or, as the case may be, a sheriff principal accordingly; and
- (d) if required, nominate a judge (see rule 4(3)) to investigate a complaint.

(3) The nominated judge—

- (a) when required, investigates complaints and reports to the Lord President;
- (b) makes recommendations to the Lord President.

The complaints procedure

What type of complaints must be considered?

- 5.—(1) The Judicial Office must consider all complaints about the conduct of judges.
- (2) A complaint is to be dismissed if it does not pass the sift carried out by the Judicial Office or the sift carried out by the disciplinary judge (see rules 8 and 11 respectively).
- (3) A complaint—
- (a) is to be paused if it contains an allegation of criminal conduct (see rule 9);
 - (b) may be paused if it relates to ongoing judicial proceedings (see rule 10).

How a complaint is made

- 6.—(1) A complaint must be in writing and sent to the Judicial Office.
- (2) The complaint must set out—
- (a) the complainer's name and contact details;
 - (b) the name of the judge;
 - (c) the nature of the complaint and, in particular, the detailed allegations of misconduct;
 - (d) the dates of the alleged misconduct.
- (3) The complainer must also enclose any documents upon which the complainer seeks to rely.

What are the time limits for making a complaint?

- 7.—(1) Subject to rule 7(3), a complaint must be made within three months of the conduct complained of.
- (2) If a complaint is submitted late, the Judicial Office must —
- (a) if it considers that the complaint falls to be dismissed under rule 8(3), dismiss the complaint; or
 - (b) if it considers that the complaint does not fall to be dismissed under rule 8(3), inform the complainer that they have 28 days to seek an extension of time and invite the complainer to provide an application based on exceptional circumstances to justify the complaint being treated as on time.
- (3) The Judicial Office may extend the time limit for making a complaint only in exceptional circumstances. If the Judicial Office grants the application, the complaint will proceed to rule 8. If the application is refused, the complaint must be dismissed.

Examination of the complaint

What must the Judicial Office do with the complaint?

- 8.—(1) Promptly after receiving a complaint, the Judicial Office must send a written acknowledgement to the complainer.
- (2) The Judicial Office must then conduct a first sift of the complaint and either—
- (a) dismiss the complaint under rule 8(3);
 - (b) pause the complaint under rule 9 (allegations of criminal conduct);
 - (c) refer the complaint to the disciplinary judge under rule 10 (ongoing judicial proceedings);
or
 - (d) if satisfied (a) to (c) do not apply, refer the complaint to the disciplinary judge for consideration in terms of rule 11.

- (3) The Judicial Office must dismiss the complaint if it—
- (a) does not contain sufficient information to enable it to be understood;
 - (b) is about a judicial decision;
 - (c) raises a matter which has already been dealt with (whether under these rules or otherwise), and does not present any material new evidence; or
 - (d) raises a matter which falls within the functions of the Judicial Complaints Reviewer.
- (4) Where the Judicial Office dismisses the complaint under rule 8(3) it must notify the complainer in writing and provide the judge with a copy of the complaint with reasons for the dismissal.
- (5) Where the Judicial Office does not dismiss the complaint under rule 8(3) it must provide a copy of the complaint to the judge and advise the judge and the complainer of the next steps to be taken under these Rules.

What if there are allegations of criminal conduct?

- 9.**—(1) If it appears to the Judicial Office that a complaint concerns criminal behaviour, they must pause consideration of that part of the complaint until they are satisfied —
- (a) the Crown indicates that they do not intend to commence criminal proceedings;
 - (b) criminal proceedings have concluded; or
 - (c) it becomes clear that there will be no criminal proceedings.
- (2) Where the Judicial Office pauses a complaint under this rule, it must—
- (a) provide a copy of the complaint to the judge; and
 - (b) notify the judge and complainer in writing that consideration of the complaint has been paused under this rule.
- (3) When the Judicial Office is satisfied that one of the conditions in rule 9(1)(a) to (c) applies, the complaint will be referred to the disciplinary judge for consideration under rule 11.

What happens if the complaint relates to ongoing judicial proceedings?

- 10.**—(1) If the complaint does not fall to be dismissed under rule 8(2)(a) and it relates to ongoing judicial proceedings, the Judicial Office must refer the complaint to the disciplinary judge to advise on whether it is appropriate to consider the complaint before the judicial proceedings are concluded.
- (2) Where the disciplinary judge advises that it would not be appropriate to proceed—
- (a) consideration of the complaint is paused until the proceedings have concluded; and
 - (b) the Judicial Office must notify the complainer and the judge of that fact in writing.
- (3) When proceedings have concluded, the complainer must notify the Judicial Office within 28 days of the case concluding. Failure to inform the Judicial Office within 28 days if it was, or reasonably ought to have been, within the complainer’s knowledge, may result in the complaint being dismissed by the disciplinary judge.
- (4) If the disciplinary judge considers that the complaint should proceed, irrespective of ongoing proceedings, or after those proceedings have concluded, the complaint will be considered under rule 11.

Referral to the disciplinary judge

Disciplinary judge to decide whether an investigation is required

- 11.**—(1) The disciplinary judge must carry out a second sift of the complaint and either—
- (a) dismiss the complaint under rule 11(2);

- (b) refer the complaint to the Lord President or, as the case may be, a sheriff principal on fitness for office grounds; or
 - (c) refer the complaint to a nominated judge to investigate.
- (2) The disciplinary judge must dismiss the complaint if they consider that it—
- (a) should not have passed the sift under rule 8(2);
 - (b) is vexatious;
 - (c) is without substance; or
 - (d) even if substantiated, would not require any disciplinary action to be taken.
- (3) Where a complaint is dismissed under rule 11(2), the Judicial Office is to write to the judge and the complainer to that effect.
- (4) This rule only applies if the judge is still in office. If the complaint is not dismissed under rule 11(2) the disciplinary judge must—
- (a) consider whether the complaint, if substantiated, would call into question the judge’s fitness for office; and
 - (b) if so, inform the Lord President or, where the judge is a justice of the peace, the relevant sheriff principal.
- (5) Where the Lord President is informed under rule 11(4)(b), the Lord President must decide whether to ask the First Minister to establish a tribunal to consider the judge’s fitness for office.
- (6) Where a sheriff principal is informed under rule 11(4)(b), the sheriff principal must decide whether to ask the Lord President to appoint a tribunal.
- (7) Where the Lord President requests the establishment of, or appoints, a tribunal—
- (a) consideration of the complaint under these rules ceases; and
 - (b) the Judicial Office must notify the judge and the complainer of that in writing.
- (8) If the disciplinary judge considers that the complaint requires to be investigated, they must allocate the complaint to a nominated judge and the Judicial Office must—
- (a) give written notice to the complainer and the judge—
 - (i) that the complaint has been allocated to a nominated judge; and
 - (ii) inform them of the next step to be taken;
 - (b) send a copy of the complaint and all accompanying documentation to the nominated judge.

Allocation to a nominated judge

Allocation to a nominated judge

12.—(1) Subject to rule 12(2), the disciplinary judge must nominate a judge of the Court of Session, a sheriff principal or the Chairman of the Scottish Land Court to investigate the complaint.

- (2) The nominated judge must be a judge of the Court of Session where the complaint 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 provided the complaint concerns the execution of a function of that appointment;
 - (e) a sheriff principal;
 - (f) any of the above office holders sitting as a judicial member of the Upper Tribunal for Scotland.

What must the nominated judge do?

13.—(1) The nominated judge must investigate the complaint promptly and—

- (a) determine the facts of the matter;
- (b) determine whether the complaint is substantiated (in whole or in part);
- (c) if the complaint is substantiated, in whole or in part, make a recommendation that the Lord President exercise a power mentioned in section 29(1) of the 2008 Act;
- (d) complete any investigations within 21 weeks and may extend the time limit only in exceptional circumstances.

(2) Where at any stage in considering a complaint the nominated judge believes that the complaint may be resolved to the satisfaction of the complainer and the judge without further investigation, the nominated judge may communicate with them both with a view to securing that outcome.

(3) Where the complaint is resolved—

- (a) the nominated judge must notify the Judicial Office; and
- (b) consideration of the complaint ceases.

(4) The nominated judge must take account of any guidance relating to the conduct of judges issued by the Lord President.

Nominated judge's powers of investigation

14.—(1) The nominated judge may do anything necessary for the purpose of investigating the complaint, including—

- (a) imposing a time limit on any step to be taken by the complainer or the judge;
- (b) varying a deadline or time limit imposed under these rules in relation to their investigation;
- (c) making inquiries;
- (d) obtaining and considering any documents;
- (e) requiring the complainer or the judge to lodge any information they hold relating to the complaint;
- (f) interviewing any persons.

(2) If the nominated judge is to interview any person, including but not limited to the judge and the complainer, they must—

- (a) give the interviewee reasonable notice of the date and time of the interview;
- (b) permit the interviewee to be accompanied by a person of his or her choosing for the purpose of—
 - (i) providing moral support;
 - (ii) helping to manage papers;
 - (iii) taking notes;
 - (iv) offering advice.

(3) The nominated judge may arrange for an interview to be recorded by any means they consider appropriate.

(4) The judge, the complainer and any other interested parties must comply with a request to be interviewed.

(5) Where an interviewee signs a note of an interview taken by the nominated judge, that note is deemed to be an accurate record of the interview.

How will the investigation be conducted?

15.—(1) The procedure and conduct of an investigation is to be as the nominated judge thinks fit.

(2) The nominated judge must give the complainer and the judge a note setting out the procedure to be followed.

(3) The nominated judge may depart from that procedure provided they inform the complainer and judge in writing before doing so.

(4) The judge must be given the opportunity to submit a written response to the complaint.

(5) The complainer and the judge must be given the opportunity to submit written comments on any information obtained by the nominated judge which they have not previously seen.

(6) The nominated judge may reach conclusions based on the information ascertained throughout the investigation.

(7) The nominated judge must submit a written report to the Lord President setting out the matters referred to in rule 16(3), and provide reasons for any conclusions reached.

(8) So far as the determination of questions of fact is concerned, findings of fact are to be made on the balance of probabilities.

(9) So far as reasonably possible, the investigation is to be conducted without the disclosure of the identity of the complainer or the judge to third parties who are not invited to assist with the investigation.

(10) Rule 15(9) does not apply to the Lord President's decision under rule 17(5) on publication or disclosure of the complaint.

(11) The nominated judge is to make a note of all material communications in the course of the investigation and keep a file containing—

- (a) those notes;
- (b) all relevant documents; and
- (c) recordings of any interviews.

The nominated judge's report

The nominated judge's report

16.—(1) The report must—

- (a) be accompanied by the file;
- (b) be sent to the judge and the Judicial Office for Scotland.

(2) On receipt of the report, the judge may lodge written representations with the Judicial Office, no later than four weeks of receipt of the report.

(3) The Lord President must consider the report and any written representations from the judge and, if the report contained a recommendation to exercise a power in section 29(1) of the 2008 Act, decide—

- (a) whether to follow this recommendation;
- (b) whether to take any other action open to the Lord President.

Outcome of the investigation

Notification of outcome

17.—(1) This rule applies where the Lord President has—

- (a) received a report under rule 16; and
- (b) taken the action (if any) which the Lord President proposes to take.

(2) The Judicial Office must inform the complainer in writing of—

- (a) the outcome of the investigation; and

(b) any action taken by the Lord President in consequence.

(3) The Judicial Office's letter to the complainer must contain such information as the Lord President considers appropriate for the purpose of explaining to the complainer the reasons for the outcome and any actions taken.

(4) The Lord President must inform the judge in writing of—

(a) the outcome of the investigation into the complaint; and

(b) any action that is to be taken.

(5) The Lord President may publish or disclose to any person such information concerning the complaint and the outcome (including the identity of the complainer or the judge) as the Lord President considers appropriate.

Miscellaneous

Withdrawal of complaints

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

(2) If a complainer fails to respond to correspondence from the Judicial Office or the nominated judge within 28 days or refuses a request to be interviewed, the complaint may be deemed to have been withdrawn.

(3) If a complaint has been withdrawn, the nominated judge may decide that further procedure is appropriate and continue to consider the complaint.

(4) Where a complaint continues to be investigated despite being withdrawn, the procedure in these rules continues to apply, except where they impose any obligation on or in respect of a complainer such as a requirement to notify the complainer or seek comment from the complainer, in which case such an obligation is disapplied.

Consideration of matters in absence of a complaint

19.—(1) Where no complaint is made under these rules but the disciplinary judge receives information from any source which suggests to them that consideration under these rules of a possible allegation of misconduct is appropriate, the disciplinary judge may refer the matter to Judicial Office for consideration.

(2) Where a matter is treated as a complaint under this rule, the procedure in these rules will apply, except where they impose any obligation on or in respect of a complainer.

(3) In cases arising under this rule, the 3 month time limit in rule 7 for complaints applies in respect of a referral and begins from the date the disciplinary judge receives the information which suggests a referral under rule 19(1) is appropriate.

What if the judge ceases to hold judicial office?

20.—(1) Subject to the other requirements of these rules, a complaint may be accepted, and consideration of a complaint may continue, after the judge subject to the complaint has ceased to be a judge, provided the complaint relates to their conduct at the time of being a judge.

(2) A new complaint under rule 20(1) must be made under these rules as if the judge were still in office, and is subject to the 3 month time limit in rule 7 with the further limitation that the Judicial Office cannot, under rule 7(3), extend the time for accepting a complaint beyond 12 months of the date the judge ceased to be a judge.

(3) Where consideration of a complaint commences, or continues, after a judge has ceased to be a judge:

(a) the procedure in these rules applies or, as the case may be, continues to apply;

- (b) the former judge will be invited to provide their comments; and
- (c) the nominated judge shall submit their report in accordance with rule 16.
- (4) Where a judge who is the subject of a complaint dies, consideration of the complaint ceases.

Revocation and Saving

21.—(1) The Complaints about the Judiciary (Scotland) Rules 2017 that came into force on 1 April 2017 are revoked.

(2) Despite the revocation of those Rules, they continue to apply to complaints made to the Judicial Office before these Rules come into force.

CJM SUTHERLAND
Lord President of the Court of Session

Edinburgh
31 August 2024