



EMPLOYMENT TRIBUNALS (SCOTLAND)

Making a Complaint About Judicial Misconduct by an Employment Judge in Scotland

1. Judicial Office holders to whom this policy applies

This policy applies to complaints about misconduct by Employment Judges in Scotland. If a person wishes to make a complaint about a non legal (lay) member of Employment Tribunals (Scotland) then the procedure to be followed is set out in the Judicial Conduct (Tribunals) Rules 2014 (the 2014 Rules) which are available at https://s3-eu-west-2.amazonaws.com/jcio-prod-storage-1xuw6pgd2brf/uploads/2015/12/Judicial_Conduct_Tribunals_Rules_2014.pdf The 2014 Rules do not apply to complaints about Employment Judges sitting in Scotland.

2. Definition of Terms

Any reference in this policy to:

- a) the “President” is to the President of Employment Tribunals (Scotland);
- b) the “Vice President” is to the Vice President of Employment Tribunals (Scotland);
- c) the “Employment Judge concerned” is to the Employment Judge about whom a complaint has been made.

3. Exclusion of judicial decisions

Complaints about judicial decisions made by Employment Judges, whether in connection with the management of a case before a hearing or decisions made during or at the end of a hearing, do not come within the scope of the policy.* (See footnote for further information.)

4. Who will consider and decide upon the complaint?

- 4.1 If a complaint about judicial misconduct is received the President may consider and decide upon it. Alternatively, the President may ask the Vice President to consider and decide upon the complaint.
- 4.2 In considering a complaint it is for the President or Vice President to decide what steps should be taken to investigate it.

5. How to make a complaint and the time limit which applies

- 5.1 A complaint about an Employment Judge must be made in writing to the President. It may be sent by post to the Office of the President, Employment Tribunals (Scotland), 3rd floor, Eagle Building, Glasgow, G2 7TS or electronically to Glasgow.President@hmcts.gsi.gov.uk.
- 5.2 A complaint must be received by the President no later than 3 months from the occurrence of the event(s) giving rise to the complaint although in exceptional circumstances the President may extend this time limit. The fact that a complaint contains an allegation of judicial misconduct will not, by itself, be sufficient reason to accept a complaint after the 3-month time limit has expired.
- 5.3 A complaint must:-
- a) state the name of the Judge against whom the complaint is made or otherwise provide information which allows them to be identified;
 - b) contain one or more allegations of judicial misconduct;
 - c) be legible;
 - d) be accompanied by all documents within the control of the person complaining upon which that person seeks to rely in making the complaint;
 - e) state the date or dates upon which the alleged misconduct took place;
 - f) state the name and address of the person making the complaint.
- 5.4 A complaint will not be accepted if it does not meet the conditions set out in paragraph 5.3.
- 5.5 A complaint will not be accepted if the person making the complaint states that he or she does not want the Employment Judge concerned, or any other person considered by the President or Vice President to be a relevant witness, to see a copy of the complaint or any documents relating to the complaint and its investigation. Similarly, if the person making the complaint seeks to impose such a restriction at any point prior to a decision being made about the matter raised no further action will be taken in connection with the complaint and the person will be notified in writing that the complaint will be dismissed if the restriction is not lifted no later than 10 working days after the warning letter is sent.

6. Assessment of the complaint at the initial stage

- 6.1 The President will conduct an initial assessment of the complaint and must dismiss the complaint (or part of it, as the case may be) if:-
- a) it does not provide sufficient information to understand the nature of the complaint being made (although before dismissing on this ground the President will give the person making the complaint a reasonable opportunity to provide sufficient information);
 - b) it is about a judicial decision or judicial case management;
 - c) the action complained of was not done or caused to be done by the Employment Judge concerned;
 - d) it is vexatious;
 - e) it is without substance;
 - f) even if true, it would not require any disciplinary action to be taken;
 - g) it is untrue, mistaken or misconceived;
 - h) it raises a matter which has already been dealt with, whether under this policy or otherwise and does not present any material new evidence;
 - i) it is about a person who is no longer an Employment Judge;

- j) it is about the private life of an Employment Judge and could not reasonably be considered to affect their suitability to hold judicial office;
- k) it is about the professional conduct in a non-judicial capacity of an Employment Judge and could not reasonably be considered to affect their suitability to hold judicial office;
- l) for any other reason it does not relate to misconduct by the Employment Judge concerned.

6.2 If a complaint is dismissed at the initial stage then the President will:-

- a) inform the person making the complaint of the dismissal and the reasons for it;
- b) inform the Employment Judge concerned, if he or she is already aware of the complaint, or the President otherwise considers it appropriate, of the dismissal and the reasons for it.

7. Deferral of consideration of complaint

7.1 In the event that the President considers it appropriate to defer consideration of a complaint for a particular reason (for example because the complaint includes an allegation of criminal conduct which will require to be investigated by other authorities or because the complaint involves judicial proceedings which have not yet concluded and there is a danger of interfering with the administration of justice) then consideration will be deferred until the President considers it appropriate to proceed.

7.2 The person making the complaint and the Employment Judge concerned will be informed of the decision to defer and the reasons for it.

8. Further procedure after initial stage assessment

8.1 If a complaint proceeds beyond the initial stage assessment the President will decide whether the President, or the Vice President, will be the person who conducts any necessary further investigation and decides upon the complaint.

8.2 The Employment Judge concerned will be sent a copy of the complaint and any other relevant documents if that has not already occurred.

8.3 The Employment Judge concerned and the person making the complaint will be informed of whether the matter is being considered by the President or Vice President.

8.4 For the purposes of considering a complaint the President or Vice President may:-

- a) make such enquiries as are considered appropriate;
- b) request any documents or other evidence from any person which appear to be relevant;
- c) interview any person who it is considered may have relevant information.

8.5 Where at any stage in considering a complaint the President or Vice President (as the case may be) thinks that the complaint may be resolved informally to the satisfaction of the person making the complaint and the Employment Judge concerned, the President or Vice President may communicate with them both with a view to securing that outcome. If an informal resolution is agreed, the complaint will cease to be considered under this policy.

8.6 If the person making a complaint fails to respond to a request for further information from the President or Vice President within 21 days of the request being made, or refuses a request to be interviewed as part of the investigation, then the complaint will be deemed to have been

withdrawn. An application for reinstatement of the complaint may be made in the event that there are exceptional circumstances which justify the failure to respond within 21 days.

9. Right of the Employment Judge to provide a response

- 9.1 If a complaint is dismissed at the initial assessment stage the President will decide whether it is appropriate to provide a copy of the complaint to the Employment Judge concerned.
- 9.2 In the event that a complaint proceeds beyond the initial assessment stage the Employment Judge concerned is entitled to be provided with a copy of the complaint, any documents provided by the person making the complaint or any other person, any witness statements and any other information which is generated by the enquiries of the President or Vice President.
- 9.3 The President or Vice President may interview the Employment Judge concerned in connection with the complaint or any matter arising from its investigation.
- 9.4 The Employment Judge concerned is entitled during the course of the investigation to submit any information he or she considers relevant, whether in writing or orally at a meeting, if requested, with the President or Vice President.
- 9.5 The Employment Judge concerned is entitled to see all of the information in whatever form elicited by the investigation and the President or Vice President must give the Judge at least 15 working days from the date the information is sent to make representations, in writing and, if requested, orally at a meeting before deciding whether to uphold the complaint to any extent.

10. Considering and deciding upon a complaint

- 10.1 Where a complaint has proceeded beyond the initial assessment stage and has not been informally resolved in accordance with paragraph 8.5, the President or Vice President must, after considering the complaint, dismiss or uphold it (entirely or in part).
- 10.2 In considering a complaint the President or Vice President will:-
 - a) determine the relevant facts;
 - b) determine whether on the facts misconduct has occurred;
 - c) reach a decision on whether action should be taken and if so what action it would be appropriate to take.
- 10.3 The President or Vice President must inform the person making the complaint and the Employment Judge concerned about whether the complaint has been dismissed or upheld to any extent and must give written reasons for the decision made.

11. Possible outcomes if a complaint is upheld

- 11.1 In the event that a complaint is upheld to any extent then the President or Vice President shall decide on the appropriate action to be taken.

11.2 Action to be taken can include:-

- a) dealing with the matter informally by one or more of counselling, pastoral advice or directing that further training is to be provided; or
- b) dealing with the matter formally by issuing a reprimand and/or warning to the Employment Judge concerned if it is found that their conduct has fallen below the standard normally expected of an Employment Judge in Scotland. Such action will be noted on the Judge's personal file.

11.3 In addition to the action set out at 11.2 the President may draw the matter to the attention of Lord President if she considers it appropriate to do so.

11.4 The person making the complaint is entitled to be informed that action falling within the scope of paragraph 11.2 has been taken but not to know the exact nature of that action.

12. Re-opening a Case that has been dismissed

12.1 Exceptionally, the President may re-open a complaint that has been dismissed where new information is received concerning the complaint.

12.2 For these purposes, new information means information which:-

- a) relates to judicial misconduct;
- b) is legible;
- c) has not already been considered when the complaint was dealt with originally;
- d) is sufficiently serious to justify re-opening a complaint.

13. Appeal rights

13.1 If a complaint is not upheld by the Vice President the person making the complaint may appeal to the President but only on the grounds that there has been a failure to follow this policy or that the Vice President did not act impartially in considering the complaint.

13.2 There is no appeal from any decision of the President.

14. Extension of time limits

If there is good cause to do so the President or Vice President can extend any time limit in this policy but must inform the person making the complaint and the Employment Judge concerned that an extension has been granted and the reason(s) for that extension.

*Judicial decisions of this kind can only be challenged by means of an application for reconsideration under Rule 70 (if the decision is a judgment) or by means of an application to vary, suspend or set aside a case management order under Rule 29 of the Employment Tribunal Rules of Procedure (Annex 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013) or by means of an appeal to the Employment Appeal Tribunal.