



# The Scottish Justices Association

## *The Scottish Justice – eNewsletter*

***April 2020***

Welcome to the second of this year's newsletters. Even as recently as just a few weeks ago, I doubt any of us could have imagined the circumstances in which we now find ourselves. The impact of Coronavirus has spread far and wide. Some of you reading this may have lost family members or friends to the virus, or know of others who have and many of you will have been impacted professionally by the workplace restrictions. All of us will be following the advice to stay isolated as best we can and of course we have all seen our court sittings end; all but the most essential of court business now having been halted for the time being. Whatever your personal circumstances and however you have been affected by Coronavirus, the SJA committee members wish you well and trust that you and your families keep safe.

It may seem that SJA matters are of limited consequence at the moment, however, courts will re-open in due course and business will resume and looking forward to that point, the committee wishes to update members on a number of matters. The articles below concern the on-going discussions regarding JP expenses; JP courts workload; and correspondence between the SJA and Ms Margaret Mitchell MSP on the matter of recusals.

Any communication to the Scottish Justice can be sent to our email address

[editor@scottishjustices.org](mailto:editor@scottishjustices.org)

### **JP Expenses and Allowances Rates**

All members should now be aware that SCTS are introducing revised Travel & Subsistence rates for JPs in Scotland from 1<sup>st</sup> April 2020. These rates have been the subject of considerable debate between the SJA and SCTS, and there are still some allowances which the SJA believe that JPs will be unable to reclaim the full and legitimate costs incurred whilst fulfilling their official duties and are as such unacceptable.

Due to the exceptional circumstances that we find ourselves in at present, and coupled with the fact that all JPs are effectively 'stood down' for an indeterminate period, and thereby not eligible to claim expenses; the SJA Executive Committee have decided not to raise the matter with the Scottish Government's Justice Committee at the present time.

The SJA welcome the decision to revise the rates as they were last reviewed in 2009, over a decade ago. We also welcome the increase in the mileage rates for JPs using their own transport. In particular we are very pleased to note the new rates for more environmentally friendly vehicles and indeed for use of pedal cycles. We also believe that the overnight subsistence rates are reasonable, albeit rather academic, as virtually all overnight accommodation is associated with attendance at JI Training Courses in Edinburgh, which are normally booked by the JI or the Sheriffdom.

The SJA do however still take issue with the SCTS on Meal Subsistence Allowances, Carer Allowances and Financial Loss Expenses. In each case the issues are given below:-

- Meal Subsistence – the core issue is the allowance for up to 8 hours absence from home (in effect a lunch allowance). This represents a £0.66p increase over the past decade. Many of our members, particularly those serving in more rural courts, without access to a subsidised canteen facility, have reported that in local commercial premises it is impossible to obtain a meal and beverage (non-alcoholic of course!) for the sum of £8.00p. We do accept that there has to be a limit but given existing prices and the irregularity of review we believe that the allowance should be set at a more reasonable figure of around £15.00p
- Carer Expenses – the fundamental concern is with the hourly rates that a JP may claim for Child care (£5 per hour) or a carer for a dependent relative (£10 per hour). Whilst there is no cap on the amount claimed, a welcome change; the rates are simply unacceptably low. Several of our members have advised that these rates are wholly inadequate to meet actual costs. The carer rate is particularly parsimonious, given that the current minimum wage is £8.72p per hour and will be £10.50 by 2024. This coupled with the rigorous claim process to ensure that the carer is suitably employed and insured, makes the rate unsustainable.
- Financial Loss Expenses – the revised rates presume that the hourly rate for a self-employed JP, before tax, is £14.57p per hour. The SJA consider this rate to be massively inadequate. We recognise that no JP undertakes the role for financial benefit but we firmly believe that reasonable rates must be applied.

The SJA Executive Committee fully recognise that the Scottish Government's priorities must rightly lie elsewhere at the moment. We shall, however raise the issue formally with the Justice Committee once there is a return to something like normality and when JPs are back serving on the bench. We do wish to advise members therefore that the whole issue of JP expenses is in abeyance but we shall continue to press for more realistic rates in what will hopefully be the near future.

## JP COURTS WORKLOAD

A consistent theme of the last SJA annual report was the observation by a majority of contributors that cases being dealt with by JP courts in the various sheriffdoms had fallen considerably.

There was a potential concern expressed that this trend would continue, to such an extent that the provision of lay justice in Scotland would disappear or at least reduce to the point of non-viability. In discussion some of the reasons adduced for the apparent reduction in cases were:-

- A greater use of fixed penalties by the Police
- A greater use of fixed penalties by the Fiscal service
- The introduction of Summary Sheriffs
- A change in strategy by the Justice Secretary/Crown Office?

All cases dealt with in the JP courts are sent via the Fiscal Service (COPFS), however the SJA has no formal liaison with COPFS. On the other hand our legal advisors do meet with Fiscals.

We sought the opinion of some legal advisors (one of whom had discussed the issue directly with the Lord Advocate) and learned that while historically there had been a very big increase in JP work following the establishment of Police Scotland, since then the overall volume of business had fallen, at least in the medium term. With the exception of Glasgow, 'business' was recovering\*, but another factor had been a lack of marking resources in COPFS - a situation in the process of being rectified.

Indeed over the last 12/24 months, the volume of cases coming in the JP courts has been fairly steady. Any peaks and troughs are largely attributable to seasonal factors and arguably economic factors over which COPFS has no control. All respondents we contacted were adamant that there are no policies or strategies to limit work in the JP court and were confident that they would be aware of such.

As a final comment we can expect the suspension of JP court sittings to continue until the current Coronavirus issues are resolved. The impact on workload is yet to be assessed.

Note - The SCTS intranet site has a section on Management Information called 'Connect', which has all the relevant information about the number of cases heard in every JP Court, disposals and timescales. The system is called MIAT - Management Information Analysis Team, and provides all relevant information that a JP could request in terms of cases and relevant statistics in their court.

We strongly recommend that you ask your SLA to show and demonstrate the MIAT facility to you. Arguably all JPs should be aware of this information. It is only available through the SCTS intranet site and therefore on an encrypted SCTS PC, but members should be able to access it when in court

\*No reason was offered for this.

David Ferguson  
Dennis Barr  
Phil Cropper

## **Recusals in the JP Court**

Some members may have seen a recent article in the 'National' newspaper which contained several quotes from a letter sent by our Secretary, Dennis Barr, to Margaret Mitchell MSP, the Convenor of the Scottish Justice Committee. The article related to a petition that has been put forward to the Justice Committee for a 'Register of Interests' to be held for all Judicial Post holders in Scotland. Both, the Justice Secretary, Humza Yousaf, and the Lord President, are opposed to this petition, on the basis of the invasion of privacy that would result. This response is one that the SJA would support.

The newspaper article was ambiguous on the position of the SJA and in fact the letter that was written to the Convenor of the Justice Committee addressed a different question altogether. Our Chairman, Gordon Hunter, received a letter from Margaret Mitchell MSP at the end of November 2019, seeking information on engagement by JPs with the system of recusals. In particular it was mentioned that the petitioner had stated 'that the lack of recusals from JPs are a matter for concern and should be investigated further'. Specifically, and to quote final paragraph in full:-

'The Committee also seeks to establish if there have been any instances where JPs have recused themselves from hearing cases and, if so, is this information publicly available? If not, do you have a view on whether in this respect JPs should be treated the same way as Sheriffs?'

The Chairman and Secretary therefore set out to establish the issues surrounding recusals in the JP Court and thanks to input from the SLA's in the six Sheriffdoms were able to frame the response which was dated 27<sup>th</sup> January 2020 and is given in full below.

*Dear Ms Mitchell,*

### **Petition1458 – Proposal to establish a register of judicial interests**

*With reference to both your letter to Mr Gordon Hunter, the Chair of the Scottish Justices Association, on 22<sup>nd</sup> November 2019, and his reply dated 24<sup>th</sup> November 2019 on the matter of Justice of the Peace (JP) recusals, I can now advise that we have investigated this matter further.*

*We have established that recusals by JPs do happen occasionally, but to date all such instances have been initiated by the JP themselves. If I may use myself as an example, I have recused myself on three separate occasions, sitting in the JP Courts in Glasgow over the past ten years, as I have personally known the accused. We have been advised by Scottish Courts and Tribunals Service (SCTS) staff, that in instances where the JP has initiated the recusal themselves, it is treated as an informal administrative decision not to sit in a particular case, and as such is not recorded.*

*If, however, the court receives a formal motion from either the Procurator-fiscal or the defence agent then it must be recorded by the Clerk of the Court and details must be sent to the Judicial Office, where the information is collated on behalf of the Lord President. This formal notification is recorded irrespective of whether the motion for the recusal*

*was granted or refused. This arrangement has been in place in the JP Courts since 2018.*

*It is evident from the pro-forma used by SCTS staff acting as Clerk of the Court, for recording such motions, that use of the pro-forma applies to all levels of the Judiciary in Scotland, including JPs. In discussions with SCTS in each of the six Sheriffdoms it became clear that nobody could recall the use of the pro-forma in any Scottish JP Court over the past two years.*

*I do think it important to stress that in principle JPs do consider themselves to be fully integrated members of the Scottish Judiciary and would seek to be subject to the same processes and procedures as other members. The lack of formal motions for the recusal of JPs is, we believe, more reflective of the fact that JPs are representative members of the community they live within and serve; and clearly wish to demonstrate their impartiality in the cases that come before them. The relative minor nature of the criminal cases heard by JPs may also be a factor, notwithstanding the fact that some cases may have a relatively high public profile.*

*I can assure you that all of the Sheriffdom Legal Advisors (SLAs), who sit alongside JPs in court, are aware of the requirement to use the standard pro-forma when a formal motion for a recusal is made. I am not aware of any formal recording of instances where a JP has recused themselves from a case, and thereby it would not be possible to provide the public with such details.*

*As far as the SJA believe, this policy of regarding self-recusals as informal administrative decisions, and thus not recorded, applies to all levels of the Judiciary in Scotland. To this extent we understand that we are treated in the same manner as Sheriffs, and indeed Senators, and it is an approach that we would vigorously support.*

*I hope that this clarifies the position, but if you do require any further information then I and all other members of the SJA Executive Committee would be very happy to assist.*

*Yours sincerely,*

*Dennis W. Barr*

*Secretary*

The SJA Executive wish to ensure that all members are aware of the formal process of recusals as detailed above and that we always strive to represent the best interests of JPs to Judicial Authorities and to the community as a whole.

Dennis Barr