



# The Scottish Justices Association

## *The Scottish Justice – eNewsletter*

### **December 2021**

Welcome to the third of this year's newsletters from The Scottish Justices Association. I suspect many of you, like me, would have been hoping that by now we had seen the worst of the difficulties caused by Coronavirus. Almost two years after Covid first entered our everyday lexicon, we find ourselves still having to deal with the consequences of this dreadful virus. As if this wasn't enough to contend with, the after effects of early winter storms have also impacted many households across Scotland, leaving many without essential services. Despite these many trials and tribulations the SJA Executive Committee hopes that this finds you and your loved ones safe and well and hope that the coming festive season provides us all with a little welcome relief.

The Association continues to work hard on behalf of all members and the Executive Committee hopes you find this newsletter an informative and interesting read. Included in this edition is an article written by Dennis Barr JP, formerly the SJA secretary, concerning JP training in Scotland and which first appeared in the Commonwealth Judicial Journal. There is also an article by David Donaldson JP about his experience of swearing in police recruits at the Scottish Police training college at Tulliallan. Finally, Grace Macleod, SJA chair has penned a version of The Twelve Days of Christmas that I'm certain you won't have seen before!



As always, if you've any comments or thoughts on any of the articles in the newsletter, or wish to submit articles for future publication, these can be sent to [editor@scottishjustices.org](mailto:editor@scottishjustices.org)

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## **THE IMPACT OF TRAINING ON THE TRANSFORMATION OF LAY JUSTICE IN SCOTLAND**

**Dennis W. Barr, B.A. (Hons), J.P.—Secretary, Scottish Justices Association**

**Abstract:** *In 2004 an independent review of summary justice in Scotland recommended the abolition of lay justice. A minority view however successfully argued for its retention, but with major changes. As a result new Justice of the Peace (JP) Courts were established under the control of the then Scottish Courts Service, and new policies introduced for the recruitment, appraisal and, in particular, the training of JPs. The Judicial Institute for Scotland, which is responsible for all judicial training, has developed specific training courses and a National Curriculum for JPs. As a result, over the past 15 years the lay justice courts have handled increasingly complex cases, and whilst the total number of cases has not diminished, the number of JPs in Scotland has reduced.*

**Keywords:** Lay Justice Service in Scotland – structured judicial training and development – recruitment and appraisal of lay justices

### **INTRODUCTION**

There has been a long history of lay justice, through the role of Justice of the Peace ('JP') in the British Isles. The first JPs were introduced into Scotland at the end of the 16th Century, although the concept had its origins in England as far back as the 14th Century. Historically, the role was multi-faceted but by the second half of the 20th Century had evolved into a cadre of lay judiciary regularly presiding over local courts dealing primarily with relatively minor criminal offences. In Scotland the old Police and Burgh Courts merged in 1975 to become District Courts. Sitting either singly or on a Bench of three, the JP sat with a legally qualified clerk who advised on the law, procedure, and sentencing parameters in each case.

These District Courts were operated and managed by local government authorities, and as such were responsible for JP recruitment and training. JPs in Scotland were simply appointed by the local government authority, and it was frequently used as a reward to individuals for providing service to the community. The training provided varied in quality and quantity and although there was no requirement on a JP to undertake any formal training, JPs themselves formed a national body, the District Courts Association, which delivered some limited training tailored to the needs of JPs on court craft and criminal law.

### **THE 21ST CENTURY REVIEW OF SUMMARY JUSTICE IN SCOTLAND**

Early in the 21st Century the Scottish Executive commissioned an independent review, chaired by Sheriff Principal McInnes, into the operation of the summary justice system in Scotland. The remit of the committee was 'to review the provision of summary justice in Scotland, including the structures and procedures of the Sheriff courts and District courts as they relate to summary business and the interaction between the two levels of courts and to make recommendations for the more efficient and effective delivery of summary justice

in Scotland’. The resultant McInnes Report was published in 2004. This wide-ranging review recommended a number of changes and improvements, including, that the role of Justice of the Peace in Scotland be abolished; however a Note of Dissent included in the Report successfully argued for the retention of JPs. This Note of Dissent detailed benefits gained from lay Justices of the Peace within the legal system. It argued that ‘Lay justice is a powerful expression of community participation in the regulation of society. It seems inconsistent to retain it in the most serious cases—in which completely untrained juries make key decisions on the evidence—but to remove it in the content of summary justice.’ It also opined that Scottish Justices ‘have an important symbolic effect of lay participation in the criminal justice system which should not be undervalued. The existence of citizen participation across the country with a practical understanding of what the law is and how it works, is of great importance in a democracy’. It also maintained that retention of the lay justice system would provide a more balanced perspective with judgments from within the same peer group, and could potentially provide greater efficiency by allowing professional judges to handle more serious cases.

The Note of Dissent recommended that major changes were required in a number of key areas including consistency of support and management, recruitment, training, and in the court estate. It also recommended that JPs should be subject to regular performance appraisals. Following extensive consultation, the Scottish Executive encapsulated the agreed reforms following the McInnes Report in the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 and the Justices of the Peace (Scotland) Order 2007. The role of Justice of the Peace which had evolved over 400 years was retained in Scotland but with significant reforms and it was recognised that the role of a JP is, and always has been, voluntary and unpaid.

### **RECRUITMENT OF JPs AFTER 2007**

Under the 2007 Act, Justice of the Peace Courts were established to replace District Courts and they were placed under the direct control, management and operation of the then Scottish Courts Service (‘SCS’). The JP Courts were allocated within the same six geographically aligned jurisdictions across Scotland as the Sheriff Courts. The number of JP Courts in each Sheriffdom varied to allow local access to these courts. In addition, JPs only hold jurisdiction in the Sheriffdom to which they are appointed, thereby enhancing local knowledge and appreciation of their area. The Act provided for the recruitment of new JPs and allowed existing JPs to transfer into the new system, but all were appointed for a period of five years, which is renewable by mutual agreement. The recruitment of new JPs was the responsibility of the appropriate local Sheriff Principal who was given the power to appoint members to a Justice of the Peace Advisory Committee (‘JPAC’), which included existing JPs, legal professionals and lay individuals. The JPAC has the responsibility to hold open competitive selection processes for new JPs for each individual Sheriffdom as the need arises.

### **SENTENCING POWERS FOR JPs**

The sentencing powers of JPs were limited to a fine up to a maximum of £2,500, a custodial sentence of up to 60 days, and an unlimited period of driver disqualification dependent on the offence. These levels are lower than summary cases heard by a sheriff. The allocation of

cases to the various levels of summary court is decided by the Crown Office and Procurator-Fiscal Service ('COPFS') which marks cases for prosecution in the appropriate court based on severity. Given the sentencing powers available to JPs it is inevitable that they deal with a range of less serious criminal cases including a range of motoring offences.

#### **TRAINING PLANS FOR JPs FOLLOWING INTRODUCTION OF THE 2007 ACT**

The 2007 Act gave specific prominence to the training and ongoing appraisal requirements for JPs in Scotland and details were given in the JP Order of 2007. Every newly selected prospective JP has to undertake a minimum 24 hours of training before being appointed to the bench and all existing JPs are required to complete a minimum of 12 hours of training each year. The training schedule was to be established separately for each Sheriffdom by a Justices Training Committee ('JTC'), the Committee members of who were to be appointed by the appropriate Sheriff Principal and would include legal professionals and a number of local JPs.

Each Sheriffdom JTC embraced this opportunity. For prospective JPs an initial training course was developed and is still currently in operation. Whilst the initial training was tailored to the needs of the Sheriffdom, all covered an extensive list of topics, including a basic introduction to criminal law, legal processes and legal terminology; the Scottish Courts structure and respective roles and responsibilities; summary legal procedure in Scotland and the operation and individual roles within the JP Court, including working with the Legal Advisor. The training then reviewed specific legal concepts such as judicial independence, impartiality and ethics; sentencing options and consideration of reducing reoffending; and the rules governing evidence and trials procedure. In addition to this broad approach, the JTCs arranged training on specific areas of offence which have a particular relevance in that Sheriffdom. All of the training was designed to hone the court craft skills of the new JPs and give them sufficient self-confidence in their initial sittings on the bench, knowing that experience and the support of the Legal Advisor would allow them to develop their expertise and capabilities. This was particularly important as the JP Courts were all being transitioned to a single JP bench.

The annual training plans for existing JPs tended to be a blend of reinforcing knowledge on particular facets of the law, including recent legal changes, combined with a broader appreciation and understanding of the legal community.

A critical consideration was that consistency of approach was necessary when the development of training programmes was disbursed to the six Sheriffdoms. Accordingly, each Sheriffdom was required to submit its Annual Training Plan to the Sheriff Principal and the Lord President, thereby ensuring that a competent and consistent approach was being adopted. In addition, the Convener of each of the Sheriffdom JTCs met at regular intervals, under the guidance of the Judicial Studies Committee ('JSC' - the body responsible for all Judicial Training in Scotland at that time), in order that training plans could be compared and ideas shared.

The final element in the training provision at this time was a residential training weekend organised by the JSC and open to all JPs from each of the Sheriffdoms.

### **THE APPRAISAL PROCESS FOR JPs**

Simultaneous with the establishment of a JTC for each Sheriffdom was the creation of a Justice of the Peace Appraisal Committee ('JAC'), which had the responsibility for the management of the appraisal process for JPs in that Sheriffdom. The JAC arranged for all JPs to be formally appraised twice during their five-year appointment. The appraisal process adopted was peer appraisal, and experienced JPs volunteered to undertake appraisal training which was provided by a specialist external company. The appraisal process is designed to focus on specific attributes of an effective JP, namely, effective communication and engagement in court; demonstrating effective control through focus and knowledge; being even-handed and clear in decision-making and being self-aware and recognising the need for continuous self-development.

The core element of the appraisal process is an Observation Day, in which the JP's performance is watched and commented on in detail by the appraising JP. Prior to the Observation Day the appraising JP explains the process and the JP to be appraised must complete a self-appraisal form. After the Observation, a further interview is held to discuss the individual's strengths and areas of development. Any agreed areas for improvement could then be included in an individual's ongoing training. This appraisal process continues and is in essence unchanged since its inception.

### **CREATION OF THE JUDICIAL INSTITUTE**

In January 2013 the JSC was replaced by the Judicial Institute for Scotland ('JI'). The JI is the body charged by the Lord President, as head of the judiciary in Scotland, with overall responsibility for the creation and delivery of judicial training. The JI's guiding philosophy is that judicial education is judge-led, judge-devised and judge-delivered. The JI develops and delivers training and education to address the needs of a modern judiciary in a changing environment, including induction training as well as annual training for all tiers of the Scottish judiciary.

The JI opened a specifically designed Learning Suite in Edinburgh which comprises bespoke mock court rooms and state of the art IT and electronic training facilities. Using these facilities, the JI developed a number of training courses for JPs across Scotland, all designed to promote and ensure a consistent approach. In particular it developed a range of courses specific to the needs of the JP Courts. All JPs were invited to attend these courses in the Edinburgh Learning Suite, however attendance at one of these courses did not necessarily form part of the JP's annual training requirement.

In addition to courses, the JI publish a number of notes and briefing papers which are hosted on the Judicial Hub, a customised integrated online platform offering a one-stop-shop for collaboration and learning for the Scottish judiciary. All JPs have access to the Judicial Hub which has a dedicated section to serve their specific needs.

### **THE JUSTICES OF THE PEACE (TRAINING AND APPRAISAL) (SCOTLAND) ORDER 2016**

The value and benefits of these JI training courses were recognised by all JPs who attended. However, attendance was not mandatory. The Lord President did recognise that greater emphasis was required on the consistency and specialist development of JPs across Scotland and consequently The Justices of the Peace (Training and Appraisal) (Scotland) Order 2016 was implemented. The Order made it mandatory that every JP attend a JI provided course at least once every three years. Furthermore, the Order gave a new formalised structure to the various Committees charged with JP training and introduced a national training programme and national curriculum.

This National Curriculum for JPs in Scotland provides a framework and structure around which JP knowledge and understanding can be developed and provides a baseline for all training. The full document can be accessed online by typing 'National Curriculum for Justices of the Peace' into most browsers; this will bring up the curriculum at the website associated with the URL below:

[https://www.judiciary.scot/docs/librariesprovider3/judiciarydocuments/judicial-institute-publications/national-curriculum-for-jps.pdf?sfvrsn=348a531f\\_4](https://www.judiciary.scot/docs/librariesprovider3/judiciarydocuments/judicial-institute-publications/national-curriculum-for-jps.pdf?sfvrsn=348a531f_4)

#### **EXTENSION OF JP TRAINING AND THE JP ROLE**

The effectiveness of the training provided to the JP community coupled with improved levels of competency has allowed COPFS to expand the range of cases to be heard in the JP Court. These cases include drink-driving offences and minor domestic abuse charges. In addition JPs were required to manage the handling of vulnerable witnesses in court situations. This has required additional specific training courses to be developed by the JI. These were provided by a mix of traditional lecture based training and electronic training courses which have been delivered online. Take-up of the electronic courses and progress through the various stages of training is remotely monitored by JI staff.

#### **IMPACT OF THE CORONAVIRUS PANDEMIC**

Inevitably, the Covid-19 pandemic has had a major impact, particularly in responding to the challenge presented in relation to the delivery of face-to-face training. Accordingly, the JI has had to adapt by designing, delivering and evaluating its online learning. This has required that courses are delivered through a blended approach of video exercises and live online workshops. All courses in 2021, and some in 2022 (it is anticipated), will be delivered remotely. In addition JPs across Scotland have also been able to access a range of internet-based information on the issues surrounding virtual courts using modern technology.

#### **THE IMPACT OF JP TRAINING**

The effort and skill of the training staff at both Sheriffdom and JI level, combined with improved competency levels of JPs resulting from a more rigorous recruitment process, has allowed JPs in Scotland to cover an increasing range of cases. Whilst there has been an increased use of fixed-penalty fines by both the Police and COPFS, the total number of cases referred to the JP Courts is broadly similar to the District Courts at the time of the McInnes Report. However, the complexity and range of the cases has increased. This is primarily due to the quality and depth of the training provided to all JPs across Scotland. Despite the declining number of JPs, who now number in the region of 250 (compared with 700 in

2004), it is evident that the JP community continues to provide a valuable and potentially expanding role in the Scottish legal system. Much of this can be attributed to the professional training services which are now provided to develop and focus the skills of JPs. It is also expected that JPs will continue to be a vital resource in managing the reduction of the backlog of summary criminal cases created by the Covid-19 pandemic and will therefore continue to be an essential judicial service into the future.

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### **ADMINISTERING THE OATH OF THE OFFICE OF CONSTABLE.**



The duties of the Justice of the Peace are varied, from sitting on the bench, witnessing the signing of documents to administering the oath.

Several years ago I was asked if I would join a rota of Justices who attend Tulliallan Police College to administer the oath to newly recruited officers.

Scottish Police College at Tulliallan acts as both Police Scotland's Corporate Headquarters and one of its key training venues. Set in 90 acres of

parkland in the centre of Scotland with the early 19th century Tulliallan Castle at its heart. Since opening for police training in 1954, Tulliallan has also been Scotland's central recruit training base for over 50 years.

My first visit to the college was to accompany Andrew Orr J.P. who was to carry out the official duty as I observed. The Oath ceremony took place within the auditorium which can seat up to 200 people.

Constables in Scotland are required to make the declaration given in Section 10 [1] of the Police and Fire Reform (Scotland) Act 2012 on appointment. The declaration must be made before a sheriff or justice of the peace.

*I do solemnly, sincerely and truly declare and affirm, that I will faithfully discharge the duties of the office of constable, with fairness, integrity, diligence and impartiality and that I will uphold fundamental human rights and accord equal respect to all people according to law.*

Prior to April 2013 constables in Scotland were required to make a declaration on appointment by Section 16 of the Police [Scotland] Act 1967 which states:

*S(16) Declaration to be made by constables on appointment*

*A person appointed to the office of constable of a police force shall on appointment make, before a sheriff, justice of the peace or magistrate of a burgh, a declaration in such terms as may be prescribed concerning the proper discharge of the duties of the office.*

The numbers to be sworn in can vary from course to course. After the oath ceremony the J.P then signed the individual declaration forms of each recruit which could be from 20 to 120 forms. With new technology this is now completed using electronic signatures.

The recruits come from a variety of trades and professions, some straight from school or university, some are ex forces or from other police jurisdictions. At the latest ceremony I attended nearly 50% of recruits were female.

On one occasion I was contacted before the oath ceremony and asked if I would be willing to be filmed during the oath. I had no objection to this and found myself appearing on the evening news in an item about Sir Stephen House, who was Chief Constable at that time. Sir Stephen House was succeeded by Mr Phil Gormley.

The current Chief Constable is Mr Ian Livingston. Mr Livingston has attended every oath ceremony I have been involved in during his tenure. His attendance at these ceremonies highlights the importance of this step in the recruit's training.

The current pandemic has led to the ceremonies I have been involved in recently being held on the parade ground. This allowed social distancing for the 120 recruits being sworn in.



I have recently carried out an oath ceremony whilst being observed by my fellow JP Rod Wallace who has now been added to the rota and so the role continues.

David Donaldson, JP.

### **THE TWELVE DAYS OF CHRISTMAS**

On the first day of Christmas my JP sentenced me ... to deferment and discounted fee

On the second day of Christmas my JP sentenced me... to

- Two months to pay
- And deferment and discounted fee

On the third day of Christmas my JP sentenced me... to

- Three penalty points
- Two months to pay
- And deferment and discounted fee

On the fourth day of Christmas my JP sentenced me... to

- Four hundred pounds
- Three penalty points
- Two months to pay
- And deferment and discounted fee



On the fifth day of Christmas my JP sentenced me... to

- A Compen---sation Order
- Four hundred pounds
- Three penalty points
- Two months to pay
- And deferment and discounted fee

On



the sixth day of Christmas my JP sentenced me... to

- Six penalty points
- A Compen---sation Order
- Four hundred pounds
- Three penalty points
- Two months to pay
- And deferment and discounted fee

On the seventh day of Christmas my JP sentenced me... to

- Seven fines enforcement
- Six penalty points
- A Compen---sation Order
- Four hundred pounds
- Three penalty points
- Two months to pay
- And deferment and discounted fee

On the eighth day of Christmas my JP sentenced me... to

- A Social Work assessment
- Seven fines enforcement
- Six penalty points
- A Compen---sation Order
- Four hundred pounds
- Three penalty points
- Two months to pay
- And deferment and discounted fee

On the ninth day of Christmas my JP sentenced me to

- Nine hundred pounds
- A Social Work assessment
- Seven Fines Enforcement
- Six penalty points
- A Compen---sation Order
- Four hundred pounds
- Three penalty points

- Two months to pay
- And deferment and discounted fee

On the tenth day of Christmas my JP sentenced me... to

- 10-months driving ban
- Nine hundred pounds
- A Social Work assessment
- Seven fines enforcement
- Six penalty points
- A Compensation Order
- Four hundred pounds
- Three penalty points
- Two months to pay
- And deferment and discounted fee

On the eleventh day of Christmas my JP sentenced me... to

- A Community Payback Order
- 10-months driving ban
- Nine hundred pounds
- Social Work assessment
- Seven fines enforcement
- Six penalty points
- A Compensation Order
- Four hundred pounds
- Three penalty points
- Two months to pay
- And deferment and discounted fee

On the twelfth day of Christmas my JP sentenced me... to

- 12 weeks staying sober
- Community Payback Order
- 10-months driving ban
- Nine hundred pounds
- Social Work assessment
- Seven fines enforcement
- Six penalty points
- A Compensation Order
- Four hundred pounds
- Three penalty points
- Two months to pay
- And deferment and discounted fee



**MERRY CHRISTMAS, JOYEUX NOËL, FROHE WEINACHTEN, FELIZ  
NAVIDAD, BUON NATALE, FELIZ NATAL, VROLIJK KERSTFEEST, CRĂCIUN**

**FERICIT, WESOYŃCH ŚWIĄT BOŻEGO NARODZENIA, GOD JUL, VESELÉ VÁNOCE  
FROM THE SJA EXECUTIVE †**