



DATA PROTECTION SUPERVISORY JUDGE

Judicial Data Processing Complaints Handling Policy

1. Introduction

The Data Protection Supervisory Judge was appointed by the Lord President in 2018. The role of the DPSJ includes the consideration of complaints about judicial processing of personal data.

This policy sets out the standards and procedures which the DPSJ will apply when dealing with complaints concerning the processing of personal data by the courts, tribunals and individuals acting in a judicial capacity.

The DPSJ is supported by officials in the Lord President's Private Office. The Legal Secretariat in the Private Office supports the DPSJ in considering and responding to complaints submitted to the DPSJ.

2. Application

The DPSJ has jurisdiction to consider complaints concerning the following courts and tribunals:

- The Court of Session;
- The High Court of Justiciary;
- Sheriff Appeal Court;
- Land Court;
- Sheriff courts;
- JP courts;
- Upper Tribunal for Scotland;
- First-tier Tribunal for Scotland; and

- Such other judicial bodies or tribunals as have agreed to the supervision of the DPSJ¹.

The DPSJ also has jurisdiction to deal with complaints about personal data processed by individuals acting in a judicial capacity in those courts and tribunals, i.e. judges, tribunal members and members of the Scottish Courts and Tribunals Service authorised to exercise judicial functions.

¹ When making a complaint, the complainer should contact the Lord President's Private Office for confirmation that the particular other tribunal in question has agreed to the supervisory authority of the DPSJ. Such tribunals are typically temporary in nature or concerned with single cases so it is not possible to list them here.

3. Complaints that can be dealt with by the DPSJ

The DPSJ can deal with two types of complaints:

(i) Complaints over which the DPSJ has exclusive jurisdiction

There are two categories of complaint over which the DPSJ has exclusive jurisdiction. Exclusive jurisdiction refers to the fact that these categories of complaint are not capable of being referred to the Information Commissioner due to the limit placed on its supervisory powers provided by Article 55(3) of the General Data Protection Regulation and section 117 of the Data Protection Act 2018.

- The **first category** of complaints are those concerning the processing of personal data by the following courts and tribunals when they are acting judicially: the Court of Session; the High Court of Justiciary; the Sheriff Appeal Court; the Land Court; JP courts; the First-tier and Upper Tribunals for Scotland.
- The **second category** of complaints are those concerning the processing of personal data by individuals when they are acting in a judicial capacity, e.g. sheriffs.

The most common types of situation where a court, tribunal or individual will be acting in a judicial capacity is when they are, for instance, making judicial decisions in respect of legal proceedings, such as giving case management directions, making court orders, hearing proceedings, writing or handing down judgments or orders.

(ii) Complaints over which the DPSJ does *not* have exclusive jurisdiction

These are complaints concerning the processing of personal data by judicial office holders (judges and tribunal members) when they are **not** acting in a judicial capacity. These complaints may be raised with the Information Commissioner. The DPSJ would, however, seek to investigate and try to resolve any such complaints before a formal complaint were to be raised with the Commissioner.

These complaints may arise following a refusal or rejection of a request by a data subject to exercise their rights in relation to personal data processed by a court, tribunal or a judge, tribunal member or individual. They may arise when a data subject has, for example:

- asked for confirmation that their personal data has been processed;
- asked for access to a copy of their personal data;
- asked for their personal data to be corrected (rectified), erased or for restrictions to be placed on how it is processed;
- challenged or objected to their personal data being processed;
- objected to their personal data being used in automated decision-making or profiling;
- asked for their personal data to be transferred to a third party in a structured, commonly used and machine-readable format (in certain circumstances).

4. Complaints that cannot be dealt with by the DPSJ

The DPSJ **cannot** deal with complaints concerning freedom of information. The DPSJ also **cannot** deal with complaints concerning the processing of the personal data by courts or tribunals when they are not acting in a judicial capacity. If your complaint concerns these matters you should contact The Scottish Courts and Tribunals Service who may be able to consider your complaint.

You may contact the Information Commissioner at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Further information on the protection of data can be found on the Information Commissioner's Office website: <https://ico.org.uk/for-organisations/guide-to-data-protection>

5. Complaints that are not capable of rectification by the DPSJ

There are two types of data subject request that are often made to, and refused by, courts, tribunals and individuals.

- The first is that a copy of personal data processed by a court, tribunal or individual acting in a judicial capacity be provided to the individual whose personal data it is. The basis on which such requests are made is the right of access under Article 15 GDPR. Such information is typically contained in judicial notes, notebooks, or electronic documents.
- The second is that a judgment or court order that contains personal data be corrected because it is said to contain incorrect personal data. The basis on which these requests are made is the right to rectification contained in Article 16 GDPR.

The personal data processed in both situations will have been processed by a court, tribunal and judge acting in a judicial capacity. The UK Parliament has decided that personal data processed in these situations is exempt from the right of access and the right of rectification provided for by the GDPR. The exemption is set out in Article 23(1)(f) GDPR and section 15(2)(b) and Schedule 2, Part 2, para.6; Schedule 2, Part 2, para.14(2) DPA 2018. The reason for the exemption is to secure the constitutional principles of judicial independence and of the rule of law.

Accordingly, a court, tribunal or individual who has processed such personal data whilst acting in a judicial capacity can properly refuse to provide access to, or a copy of, such data and refuse to correct such data under data protection law.

Where a complaint is made to the DPSJ concerning a refusal to provide access to, or a copy of, such personal data or to correct it, it will not be investigated as the refusal will be within the scope of the statutory exemptions.

6. What to do if you are unsure whether to raise your complaint with the DPSJ

If you are unsure of whether a complaint should be referred to either the DPSJ or the Information Commissioner, you can contact either and they will be able to advise you.

7. Submitting your complaint

You should submit your complaint in writing. The complaint should contain the following information:

- Your name and contact details;

- If you are complaining on behalf of someone else, such as a relative: their name and contact details; details of your relationship with them; and, signed confirmation you have their permission or the authority to act for them;
- The nature of the complaint and any documents relating to the complaint; and
- If the complaint concerns a data subject request that you have previously made about data processing by a court, tribunal or individual acting in a judicial capacity, details of that request and the response to it.

You should submit your request by email to: the Data Protection Supervisory Judge at LPPO@scotcourts.gov.uk.

You may also submit by writing to: Data Protection Supervisory Judge, c/o Lord President's Private Office, Parliament House, Parliament Square, Edinburgh, EH1 1RQ.

8. Receipt and Verification of Complaints

Upon receipt, your complaint will be referred to legal officials in the Lord President's Private Office who, on behalf of the DPSJ, will:

- log receipt of the complaint and give it a case reference number;
- acknowledge receipt, indicating a timescale within which you will be given a substantive response;
- establish whether the complaint is a valid one, i.e. one that comes within the DPSJ's remit; and

- if necessary, seek further information from you to clarify the nature of the complaint or to verify your identity or your authority to complain on behalf of someone else.

9. Investigating and Responding to Complaints

The DPSJ aims to provide substantive responses within 30 days of receipt of a complaint. Where this is not possible, the DPSJ will let you know and provide you with an estimate of the time within which you can expect to receive a substantive response.

The Lord President's Private Office will determine whether they or another member of the Judicial Office will investigate your complaint. Depending on the nature of the complaint, the legal official, who is authorised to act on behalf of the DPSJ, may decide the outcome of your complaint. Complex complaints will be referred to the DPSJ for investigation and decision.

A copy of the substantive response to your complaint will be kept on file for the DPSJ by the Lord President's Private Office for five years following the conclusion of the complaint.

10. Privacy

Your complaint and the response to it will be processed consistently with data protection law and for the purpose of processing your complaint. If you have made a complaint about a court, tribunal or individual, your identity may have to be disclosed to them so that the DPSJ can clearly explain what you think has gone wrong and if necessary advise them how to put it right. If you do not want information that identifies you to be so shared then the DPSJ will endeavour to

respect that. However, it is not always possible to handle a complaint on an anonymous basis and you may be contacted to discuss this.

Information on how officials in the Lord President's Private Office, on behalf of the DPSJ, process personal data concerning your complaint is contained in the Scottish Courts and Tribunals Service Privacy Notice and in the Data Security Policy, which can be obtained from dpo@scotcourts.gov.uk or by writing to: Data Protection Officer, Scottish Courts and Tribunals Service, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD.