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Our ref. 3110/2007

Mr M Glasgow
3 Tansley Court
Highfield Lane
Newbold
Chesterfield
Derbyshire S41 7AW

12 December 2007

Dear Mr Glasgow

Thank you for your letter of 15th November 2007 (and enclosures), in which you express concerns about the conduct of Recorder Anthony Barker QC during criminal proceedings at Derby Crown Court, in which you appeared earlier this year as a co-defendant charged with affray and as a result of which you received a custodial sentence.

Your complaint is about the way in which Recorder Barker conducted the trial, which you consider to have been unfair. Specifically, you argue that there were too many inconsistencies between prosecution witness statements and also within the statements provided by your co-defendant for the trial to have even been allowed to proceed. You say that someone in Recorder Barker's position should have recognised this. You ask, for instance, why he did not ask to see the photographs referred to by the co-defendant. You suggest that the co-defendant bribed his character witnesses. You ask why the Recorder did not ask where your character witnesses were. You say that in his summing up, Recorder Barker said that you had received a poke in the eye and had fallen to the floor: you point out that no poke in the eye could have caused the injuries you had suffered. You go on to argue that he misdirected the jury by saying everyone has a right to defend themselves, thereby indicating to them that the co-defendant had been defending himself. You conclude that you have been found guilty of a crime due to evidence having been presented perversely in order to convict you of a crime of which you are innocent. You describe this as a miscarriage of justice and an infringement upon your human rights. You also reveal that you have requested leave to appeal.

My role as a caseworker within the Office for Judicial Complaints is to support the Lord Chief Justice and the Lord Chancellor in their joint responsibilities for judicial conduct and discipline. Their responsibilities cover matters relating to allegations of misconduct in the way that a judicial office holder has behaved, whether inside or outside the courtroom. The Lord Chief Justice, the Lord Chancellor and officials in this Office, are not able to consider or intervene in complaints about judicial decisions. The only way in which a judicial decision can be challenged is by appeal to a higher court.

The Lord Chief Justice and Lord Chancellor's responsibilities with regard to judicial conduct are set out in the Judicial Discipline (Prescribed Procedures) Regulations 2006. Regulation 14(1)(b) provides that a complaint must be dismissed if it is about a judicial decision or judicial case management and raises no question of misconduct.

May I start by emphasising that it is not the function of this Office to question the merits of the arguments you have put forward concerning your guilt or innocence. I accept that you truly believe that you have been the victim of a miscarriage of justice. As I have explained, I must confine my attention to the personal conduct of Recorder Barker and ask the question whether he has behaved in a way which might cause the Lord Chancellor and Lord Chief Justice concerns. Were I to find that he had behaved in such a way, I would advise them accordingly and they would decide upon what form of disciplinary or admonitory action they might take. However, whatever were to come of this would and could have no impact on your case. The only option open to you would remain that of pursuing an appeal (which is indeed the course you are currently and quite correctly taking).

Having said this (and I hope here that you will have read carefully the previous paragraph), having considered the matters that you have raised in your letter of complaint, I have concluded that they relate to the way in which Recorder Barker conducted the trial and of course his judgment, and not to his personal conduct. You are challenging the fairness of his handling of the case and perhaps, by implication, his competence. You even suspect bias, although there is of course neither evidence nor reason to support such a supposition. The point is that you are not challenging the Recorder's behaviour. **Therefore, I must dismiss your complaint in accordance with Regulation 14(1)(b) of the Judicial Discipline (Prescribed Procedures) Regulations 2006, as defined earlier in this letter.**

I know that you may be disappointed with this decision, but I hope that I have at least succeeded in explaining clearly the reasons for it. However, if you would like any further information, please contact me in writing or on the telephone number provided at the top of this letter.

If, eventually, you feel that we have not handled your complaint properly, you can complain to the Judicial Appointments and Conduct Ombudsman, Sir John Brigstocke KCB. Please note that the Ombudsman can only consider a complaint about our handling of your complaint. He has no power to investigate your original complaint about the judge concerned.

The Ombudsman will be able to investigate your complaint if you write to him within 28 days of notification of our decision. After that period, he will consider whether it is appropriate to investigate it. Further information about the Ombudsman and his remit for investigations can be found at www.judicialombudsman.gov.uk. The Office of the Judicial Appointments and Conduct Ombudsman can be contacted in writing at 8th Floor, Millbank Tower, Millbank, London, SW1P 4QP, by e-mail at headoffice@jaco.gsi.gov.uk or by telephone on 020 7217 4505.

Yours sincerely



HJR Hochfelder

Senior Caseworker