



2018/2019

Annual Report

1st September 2018 to 31st August 2019

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Annex A: Register of Interests

1. FOREWORD

I am pleased to publish the Annual Report for my second year in office, as the Judicial Complaints Reviewer (JCR) for Scotland, for the period: 1 September 2018 to 31 August 2019. During that time, I received seven new cases for review.

I continue to meet with members of the Scottish Government Justice Directorate to discuss complaint handling and any issues which may have emerged. Throughout my second year in office, I have not encountered any issue in relation to resourcing and I have found that I was able to manage the caseload and any ancillary matters within my hours of work and budget. I am satisfied with the level of support and resources which I have received over the year from the Directorate.

I also continue to meet with members of the Judicial Office for Scotland (JOS) on a regular basis throughout the year to discuss individual cases, relevant developments in complaints and any issues which may arise during reviews.

To date, I have not had the opportunity to meet with the Cabinet Secretary for Justice, however the Sponsorship Team are looking at this.

2. THE CURRENT JUDICIAL COMPLAINTS REVIEWER

My name is Ian Gordon and I have been in post since 1 September 2017. I was appointed as the Judicial Complaints Reviewer by Scottish Ministers, with the agreement of the Lord President, following a publicly advertised and open process.

I operate independently of the Scottish Government and the Judiciary.

My background is in public service: as a Chief Police Officer in both England and Scotland then, latterly,

- A member of the Scottish Legal Complaints Commission;
- The Convener of the Standards Commission for Scotland;
- A member on the Scottish Social Services Council Recruitment and Conduct Sub Committees;
- Acting Commissioner for Standards in Northern Ireland.

I have also worked abroad as a consultant on strategic development, professional standards and complaints systems.

I am experienced in complaint investigations, managing complaints systems and, as the Chair of Conduct Hearings, addressing breaches of codes of conduct by elected councillors, board members of public bodies and care service workers.

3. THE ROLE AND REMIT OF THE JUDICIAL COMPLAINTS REVIEWER

The role of the JCR was created by the Judiciary and Courts (Scotland) Act 2008 which introduced the Complaints About the Judiciary (Scotland) Rules 2017¹ (the Rules). The role is twofold:

1. To review investigations into complaints against judicial office holders (JOH)² which are undertaken by the JOS to check that they have been carried out in accordance with the Rules.
2. To make written representations to the Lord President about procedures for handling the investigation of matters concerning the conduct of JOH. The Lord President who is the head of the judiciary in Scotland must have regard to my representations.

The role was extended in 2018 with the implementation of the Complaints About the Scottish Tribunals Rules 2018, which authorises the JCR to review the handling of investigations into complaints against members of certain Scottish Tribunals³.

The JOS undertakes investigations into complaints against JOH on behalf of the Lord President. In the first instance, a complaint has to be accepted as a complaint under the Rules. If a complaint is not accepted by the JOS, I cannot consider it and I would have no information available to me to question such a decision.

The Complaints About Judiciary (Scotland) Rules 2017 and the Complaints About the Scottish Tribunals Rules 2018, can be found under publications at www.scotland-judiciary.org.uk

Once the investigation process has finished the JCR then provides a free, impartial service to:

- Any person who has made a complaint about a judicial office holder (JOH), who requests its handling to be reviewed.
- Any JOH who has been the subject of an investigation and seeks a review of the investigation process to ensure that it was conducted in accordance with the Rules.

A request for a review of a complaint investigation must be made within four months of the date of the determination by the JOS otherwise, unless there is a very good reason for the delay, it will not be accepted for review.

Review requests can be made by post, email or via the JCR website. Once a request has been acknowledged and I have established that it falls within my remit, I ask the JOS to send me their complaint file.

¹ www.scotland-judiciary.org.uk/ Complaints About Court Judiciary

² JOH are - judges, sheriffs and justices of the peace.

³ The Judicial Office for Scotland will consider complaints about the personal conduct of legal and ordinary members of Housing and Property Chamber, Tax Chamber, Health and Education Chamber, General Regulatory Chamber and the Upper Tribunal for Scotland,

My remit is very narrow. I am able to review the handling of the complaint but only as a paper-based exercise using papers received from a complainant and case papers provided to me by the JOS. I cannot look at the merits of a complaint and I cannot require a complaint to be reinvestigated or overturn a decision. Nor can I obtain compensation, apologies or other redress. I can, however, make referrals to the Lord President where I find the Rules have been breached, so that he can consider what action may be required, for example he may re-open an investigation if appropriate.

4 RESOURCES

I am authorised to work up to four days per month (48 days per year), but the work is demand led so I do not always work four days. I have no office or administrative staff; I have a PO Box for mail and I work from home. I am supplied with a Scottish Government lap top, a Blackberry mobile phone, and a printer. I have secure storage for JCR files and equipment. Stationery is supplied by the Justice Department and postage is an expense drawn on my budget.

The following figures are based on my work year – 01.09.18 to 31.08.19 and not a financial year:

My daily fee is £217.00

- In 2017/18 it was 44 days @ £9548.00
- In 2018/19: I claimed for 29 days @ £6293.00

My fees in 2018/19 were £3255.00 lower than in 2017/18.

My office budget is £2000.00 per year for all facilities/equipment costs and expenses.

- In 2017/18: Costs were £1086.25, Expenses were £466.84 a Total of: £1553.09
- In 2018/19: Costs were £1166.66, Expenses were £297.40 a Total of: £1464.06

My office budget for 2018/19 had an underspend: £2000.00 – 1464.06 @ £535.94

5 OVERVIEW OF THE YEAR

In my second year, of the seven cases I received, I completed the reviews by 31 August 2019, with no cases being carried over into year three (2019/2020). In reviewing the handling of complaints by the JOS, based on the information available to me, I found no substantive breaches of the Rules. There were no other issues which required me to make any written representations to the Lord President about procedures for handling the investigation of matters concerning the conduct of JOH.

I received a few letter/telephone enquiries relating to information about the JCR process which I was able to deal with immediately or, where a message had been left on my answerphone, within a few days.

Statistics:

During the year, 1 September 2018 and 31 August 2019, the JOS handled 82 court judiciary complaints and 2 tribunal member complaints – not all have been concluded in that period.

This is a reduction of 15 judiciary complaints and 4 tribunal member complaints on the figures for 2017/18 (97 and 6 respectively). The JOS publishes statistics about complaints⁴.

Between 1 September 2018 and 31 August 2019, the JCR received 7 requests for review, which came mainly by post with some by email. A breakdown of type shows:

- 7 in relation to JOH
- None in relation to Scottish Tribunal Members (STM)

The number of requests for review by the JCR has fallen:

2018/19 – 07

2017/18 – 17

2016/17 – not published⁵

2015/16 – 37

2014/15 – 40

2013/14 – 29

2012/13 – 23

2011/12 – 20

There has been no request for review by a judicial officer holder who has been the subject of a complaint.

There has been no request on Freedom of Information (FOI).

To comply with the principles of the Data Protection Act 2018, the JCR Privacy Notice is published on the JCR website⁶.

6 OBSERVATIONS

My predecessors questioned the ‘relevance’ of the present JCR system and had recommended that a review of the JCR process be conducted by Scottish Ministers. In my first Annual Report for 2017/18 I supported such a review.

Consequent to these recommendations from successive JCR’s, a Review Meeting was held on 25 July 2019 to determine if the role of the Judicial Complaints Reviewer (JCR) was relevant and fit for purpose. The meeting comprised:

- Deputy Director - Civil Law and Legal Systems Division – Scottish Government
- Executive Director of the Judicial Office for Scotland
- Judicial Complaints Reviewer

⁴ www.scotland-judiciary.org.uk Complaints About Court Judiciary - Publications

⁵ The previous JCR has not published a report for that year of office

⁶ www.judicialcomplaintsreviewer.org.uk/ Data Protection

- Scottish Public Services Ombudsman (SPSO)
- Head of Courts and Tribunals Unit -Scottish Government
- Policy Officer – Judicial Office for Scotland
- Finance and Sponsorship Manager - Scottish Government

The JOS and the JCR both commented that the numbers of complaints had diminished over the last 18 months but, due to the low numbers overall, they could not provide any information on its relevance. The majority of complaints received are from the public and family cases drew comparatively more complaints than other types of cases. The SPSO provided an overview of best practice across the public sector on complaints. She pointed out that the proportion of complaints either increasing or decreasing should be observed closely, as this can provide expectations for management purposes.

The SPSO also flagged that signposting for the public, to be aware of and understand the complaint process, is important. The JOS and JCR commented that there is substantial information about the complaints process available in courts and online.

The Review was conscious of the recurring feature in judicial complaints where the majority of complaints arise from the complainant being unhappy with the outcome of the court process i.e., they do not agree with the ‘judicial decision’ reached by the JOH. This highlights the misunderstanding of what the JOS and the JCR can do in relation to their complaint. The legal system in the United Kingdom is founded on ensuring the independence of a JOH to make a decision based on the evidence presented during the Court/Hearing process; without influence from government, private or any other partisan interest. That judicial decision is only challengeable by appeal or, in some administrative matters, by judicial review - which is dealt with by the Court of Session in Scotland.

Despite the public information available, this remains contentious as many complainants do not understand that:

- a complaint and its review can only be made on the personal conduct of a JOH⁷,
- the JCR cannot change the decision made by the JOH,
- the JCR cannot reinvestigate the complaint.

Where the complaint has been dismissed under Section 8(4)(b), being about a ‘judicial decision’, this has a wider meaning than just the finding in the case. It is defined in the Rules⁸:

“judicial decision” includes: a judgment in a case; a decision in relation to the conduct of proceedings; a decision in relation to case management; and, a decision in relation to court programming.

Complainants regularly describe the behaviour of the JOH, when managing/conducting their case, as being inappropriate or even biased towards the other party in the proceedings. The SPSO pointed out that a complaint starts at the delivery of service, and that a consumer/client deserves the right of respect and dignity, no matter what the situation is.

⁷ http://www.scotland-judiciary.org.uk/Upload/Documents/GuidanceforMembersofthePublic2017_3.pdf

⁸ www.scotland-judiciary.org.uk/ Complaints About Court Judiciary

The previous JCR made this comment in her Annual Report,⁹ in relation to evidence of such behaviour:

“If no evidence is provided to substantiate the allegation, JOS take the view that whatever behaviour is alleged is simply part of the judge’s handling of the case or his/her decision on the case”.

The Complaint Guidance¹⁰ leaflet produced by the JOS does stress the importance of evidencing the allegation:

“It is important that you provide enough information for us to consider your complaint. For example, it is not enough to simply say that ‘The judge was rude to me’. You will need to explain what was said or done by the judge that you felt was rude; providing examples of the language used or behaviour shown”.

The JOS confirmed that where little or no evidence is provided with the initial complaint, they do write to the complainant requesting evidence, therefore the timescales are extended.

If the complainant alleges the JOH was biased, that is for an appeal process not the JOS or the JCR.

7 CONCLUSIONS

The Review Meeting recognised the benefit of a totally independent system for considering complaints about the Judiciary. There needs, however, to be a balance between the number and type of complaints received, the outcomes and the value to individuals and the public purse. Given that no substantial issues had been identified with the way the current system is operating, the recognised development over the years of the investigation of complaints by the Judicial Office for Scotland and the low number of complaints, it would not be proportionate to introduce an alternative system.

The system for review of their complaints may frustrate some complainants. Further, there may be significant financial cost to pursuing an Appeal or Judicial Review of the judicial decision. The JCR, however, is not an Ombudsman; the limitation on its role was intended by the Act¹¹ to ensure the independence of the legal system in applying the Law in Scotland.

In my Annual Report for 2017/18, I commented:

“It may also be argued that awareness, among users/potential users of the review process, that the JCR cannot resolve their complaint to their satisfaction leads them to avoid the process altogether. That said, the small number of requests for review by the JCR and where no substantial breaches have been identified, does show the JOS is proficient in handling complaints, in accordance with the Rules”.

⁹ www.judicialcomplaintsreviewer.org.uk/ JCR Annual Report 2015/16 at page 8 -

¹⁰ www.scotland-judiciary.org.uk/ Complaints About Court Judiciary

¹¹ Judiciary and Courts (Scotland) Act 2008

The positive work by the successive JCRs and the JOS, on the proper handling of judicial complaints, will have contributed to the reducing number of review requests. The JCR will continue to liaise with the JOS and the Justice Directorate to assess standards and performance in the handling of judicial complaints.

8 RECOMMENDATIONS

I agree with the outcome of the Review Meeting that, at this time, there is no substantive reason to justify a change to the current Judicial Complaints Reviewer system.

Ian A Gordon
Judicial Complaints Reviewer for Scotland
30 October 2019

ANNEX A – Register of Interests

1. Appointments held during the Report period - 2017/18:

- Acting Local Government Commissioner for Standards (Northern Ireland)
From August 2016 to present - Remunerated @ daily rate of £312.00
(This role is in abeyance at the time of this report pending the appointment of a new Northern Ireland Public Service Ombudsman)

2. Financial interests:

- Home owner in Scotland
- No relevant share holdings
- No gifts or hospitality received in relation to my role

3. Relationships:

I do not have any friendships, relationships or business dealings with any judicial office holder, Judicial Office for Scotland or Scottish Court Service employee.

4. Political activity

None