

# Judicial Complaints Reviewer Third Annual Report

## 2013/2014

1<sup>st</sup> September 2013 to 31<sup>st</sup> August 2014



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## Introduction: Making a Difference

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As I step down as Judicial Complaints Reviewer (JCR) I look back not only at the last 12 months, but over my three-year term as Scotland's first JCR – and forward to the challenges that lie ahead for the judicial complaints review process.

When I accepted the office, it was in order to make a difference and I do believe that I have had an impact, albeit a more limited one than I had hoped at the outset. My aim was to work with the Judicial Office and the Lord President to help shape a fair, user-friendly, user-centric and transparent complaints system. I saw my role as not only reviewing the handling of complaints, but also using my insights into the complaints system to work in partnership to bring about improvements to the system as a whole. I believed that my wider observations

could be fed into the justice system. For example, from my unique independent viewpoint I have seen from my complaints reviews that there are potential issues around communications training for the judiciary. My observations were an opportunity to inform and improve judicial training, to help avert future complaints and to provide a better court experience for everyone.

Unfortunately there has been little interest in the positive difference that the JCR could make. Although I have had a good working relationship with the Judicial Office, I have met the Lord President just once in three years. My interactions with both the Lord President's office and the Judicial Office have

*"...thank you for your diligent consideration throughout this process."*

focussed more on what I *cannot* do rather than what I can do, and as such an opportunity for whole-system improvement has been lost.

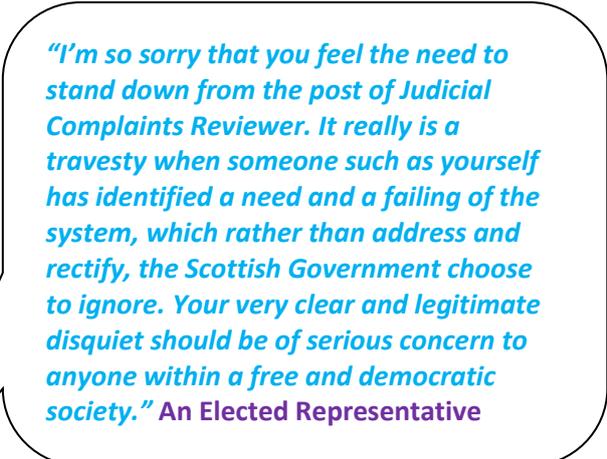
*"First of all I would like to thank you most sincerely for reviewing the handling of my complaint and bringing it to the attention of the Lord President. Although he admitted that some of the rules had been breached decided to take no further action. I would like to let you know that I was very disappointed to read ... that you would not be seeking reappointment when your term of office ends. In my opinion, although you managed to have some of your suggestions taken on board, had you been given more powers you could have made a big difference to how complaints against the Judiciary are handled and dealt with, thus ensuring justice was done and seen to be done."*

## Successes

Over the last few months of my term of office there were positive developments at the Judicial Office. I was recently invited to work with their team on reviewing their standard letters to complainers to help make them clearer and more user-friendly. I was critical of these letters from the outset and was delighted to be involved.

Another success is achieving the Lord President's agreement that he will now share a summary of the key findings of investigations with complainers, having initially decided that he would not. Complainers quite reasonably expect to see the findings of any investigation into their complaint. Sharing a *summary* is a big step forward in terms of transparency, but it still does not go far enough. I cannot see why, in most cases, the full investigation report cannot routinely be shared with both complainers and complained-about.

Last year I reported that the Lord President told me that "third parties" such as the JCR could not be given information relating to outcomes of my referrals for reasons of confidentiality. As my role is an



*"I'm so sorry that you feel the need to stand down from the post of Judicial Complaints Reviewer. It really is a travesty when someone such as yourself has identified a need and a failing of the system, which rather than address and rectify, the Scottish Government choose to ignore. Your very clear and legitimate disquiet should be of serious concern to anyone within a free and democratic society."* **An Elected Representative**

integral part of the complaints process, I was surprised that I would not be informed of the outcome of my own referrals, especially as I would have already seen the full details of each complaint. Following correspondence with the Lord President's office, I am pleased that he has reconsidered the matter and agreed that this will now be shared with the JCR. Although a welcome development, again it does not go far enough. In

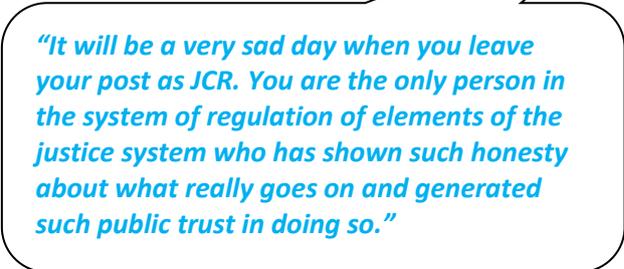
England and Wales, the outcomes of investigations, when upheld, are published on the Judicial Conduct and Investigations Office's (JCIO) website. Greater transparency builds public confidence.

When I became JCR in 2011, there was no appetite among the judiciary for an independent complaints reviewer and I have seen no evidence that that position has changed. There was also scepticism among the public about the role. The feeling was that the JCR would be in the pocket of government, or the judiciary – or both. I have asserted my independence, to the extent that both government and the judiciary have at times felt uncomfortable. My stance has helped build public trust and confidence in the office, even if frustrations have been voiced about the lack of powers of the JCR. It is vital that the

public *and* the judiciary can appreciate the value of the JCR to a fair complaints system. I have won part of the battle, with the public. I hope my successor is successful in persuading the judiciary of the benefits.

## Resources

One of my main obstacles over the last three years has been lack of resources – both time and administrative support. The resource allocation of 36 days a year has again proved insufficient to cope with the demands on the service. Following



*“It will be a very sad day when you leave your post as JCR. You are the only person in the system of regulation of elements of the justice system who has shown such honesty about what really goes on and generated such public trust in doing so.”*

discussions with Scottish Government I was given an additional day each month, bringing my working days up to 48. This made a big difference to the manageability of the workload, although with a backlog carried over year-on-year, a growing caseload and more enquiries, and the additional work on the new Rules consultation this year, I have regrettably been unable to pass on an empty in-tray to my successor.

In my last report I recommended that Scottish Government consider resourcing the role according to demand, rather than limiting it by capping the number of days. A demand-led service would allow the inherited backlog to be cleared quickly and future backlogs to be averted. Going forward this would create a better service for those seeking review, with cases dealt with in a more timely fashion.

The JCR’s annual budget remained at £2,000 to cover all of the running costs of the service with the exception of legal advice and my daily fee. As I was paid to work for more days than in previous years, to reflect the growing workload, the amount claimed in fees increased. I spent nothing on legal advice.

I continued to work as JCR from home but used the Scottish Legal Complaints Commission in Edinburgh as a postal address for correspondence. Contrary to statements made by Government, the SLCC cannot provide any administrative support or guaranteed desk space. I understand and support the SLCC’s position and I remain grateful to them for their assistance in mail-forwarding and sending out holding letters on my behalf during my holidays.

Year	Remunerated <sup>1</sup> days worked	Unremunerated <sup>2</sup> days worked	Total days worked
Year 1	36	8	44 days
Year 2	41	9	50 days
Year 3	48	7	55 days

## **New JCR**

I am delighted to welcome my successor, Gillian Thompson OBE. Gillian is a retired civil servant, a Non-Executive Director of Registry Trust Ltd, a not-for-profit company based in London, a Scottish Trustee of the Stepchange Debt Charity and a Scottish Ambassador for Tomorrow's People. She is familiar with the civil legal system in Scotland and has considerable experience in complaints handling both as a frontline officer and as a final reviewer. I wish her every success in continuing this work and in making her own mark over her term of office.

**Moi Ali**  
**Judicial Complaints Reviewer**  
**August 31<sup>st</sup> 2014**

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<sup>1</sup> £211 per day

<sup>2</sup> There is an element of public service and the JCR cannot expect to be recompensed for every hour's work.

## Overview of the Role and Remit of the Judicial Complaints Reviewer

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Created by the *Judiciary and Courts (Scotland) Act 2008*, the role<sup>3</sup> of JCR involves reviewing the handling of complaints investigations into members of the judiciary – judges, sheriffs and justices of the peace – to ensure that they have been dealt with in accordance with the Rules<sup>4</sup>.

*“I wish to thank you very much for the time and effort you have taken over this matter ... you have gone above and beyond the call of duty to get at the facts for me. I am very appreciative and I have to say that it was very time-consuming for us to unearth where to make the complaint in the first place as we were given contradictory advice by various civil service departments and the procedures were not at all that clear.”*

The JCR provides a free, impartial service to anyone who has made a complaint about a judicial office holder (JOH), who wishes its handling to be reviewed. My services are equally available to any JOH who has been the subject of an investigation. They may seek a review of the investigation process to ensure that it was conducted in accordance with the Rules. In my three years as JCR I have never been asked by JOHs to conduct a review. This is most likely because in that

time no JOH has been disciplined under the Rules.

The JCR must not be, among other things, a current or former judicial office holder, solicitor, advocate or barrister.

*“Thank you for ...all the effort and research in order to deal with my complaints fairly and impartially, which is all I have ever asked of the justice system.”*

### The JCR's Remit

The JCR's remit is twofold: I may review investigations administered by the Judicial Office for Scotland to check that they have been carried out in accordance with the Lord President's Rules; and I may “make

*“Thank you very much for your letters and your review report which I received yesterday. I do understand both the limitations on your time and your remit and I am most grateful for the trouble you have taken.”*

written representations to the Lord President about procedures for handling the investigation of matters concerning the conduct of judicial office holders.” The Lord President, the head of the judiciary in Scotland, must have regard to my representations.

<sup>3</sup> Although I am completely independent of the Lord President, Scottish Government and Scottish Ministers, I was appointed by Scottish Ministers with the Lord President's consent following a publicly advertised and open process.

<sup>4</sup> Complaints about the Judiciary (Scotland) Rules 2011 and 2013

It is useful to set out here what I *cannot* do as well as what I can – because those approaching me are often of the view that the JCR is a quasi-ombudsman who can obtain compensation, apologies or other redress for them, but I cannot. Nor can the JCR require a complaint to be reinvestigated or overturn a decision. The remit is limited to checking that the Rules were followed, and making wider representations to the Lord President – which is a valuable role, potentially leading to improvements in the complaints process for others. I can make referrals to the Lord President where the Rules have been breached, and have done so – as you can read in this report – but it is for the Lord President to decide what to do with such referrals. The public would be better served by a JCR *could* make such decisions, but this would require legislative change to bring the JCR's powers into line with her counterpart in England and Wales. Currently there is no appetite for this among politicians.

### Wider Context: Conduct Complaints Reviews in the Rest of the United Kingdom

Scotland is ahead of Northern Ireland but behind England and Wales when it comes to the independent review of judicial complaints.

In Northern Ireland there is no mechanism for independent review. Judicial conduct complaints are handled by the Lord Chief Justice of Northern Ireland, who is the head of the judiciary and the equivalent of Scotland's Lord President.

England and Wales has a more advanced system of independent oversight. Since 2006 Sir John Brigstocke KCB has been the ombudsman. Part of his remit is to investigate concerns raised by a complainant, or a judicial office holder who has been the subject of a complaint, about how the complaint was handled by the Judicial Conduct Investigations Office<sup>5</sup> (JCIO) (formerly the Office for Judicial Complaints). That element of his role is similar to my own, although as an ombudsman, he has much wider powers to look at maladministration and to make recommendations for redress, including compensation. He may also set aside the original decision and direct a new review to be undertaken, but in Scotland that power lies with the Lord President.

The Ombudsman may also investigate complaints from candidates for judicial office who claim to have been adversely affected by maladministration in the way in which their application for appointment,

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<sup>5</sup> The JCIO is the body which deals with complaints about the judiciary in England and Wales and supports the Lord Chancellor and the Lord Chief Justice (the head of the judiciary) in their joint responsibility for judicial discipline. It seeks to ensure that all judicial disciplinary issues are dealt with consistently, fairly and efficiently. The JCIO can only deal with complaints about a judicial office-holder's personal conduct and cannot consider complaints about judicial decisions or about case management.

and/or their subsequent complaint to the Judicial Appointments Commission, was handled. In Scotland that part of his role is handled by the Scottish Public Services Ombudsman.

### What Happens to a Review Request?

Review requests can be made by post, email or via the JCR's website. Once a request is acknowledged and I have established that it is within my remit, I assign it a reference number, set up a case file and inform the Judicial Office. To manage expectations and in accordance with best practice, I explain to complainers which parts of their request I can take further and which bits are beyond my remit.

When I am ready to begin my review, I ask the Judicial Office for Scotland to send me their complaint file. Taking into account all of the information before me, I carefully review the case file<sup>6</sup> and compare what happened against what the Rules require in those circumstances. The Rules, which were drawn up for the Lord President, are numbered instructions setting out what happens when a complaint arrives, what tests it must meet in order to be accepted, and what happens during an investigation and afterwards. My review is a retrospective examination of the documentation relating to a complaint, although sometimes I also need to correspond with or to meet with the Judicial Office to gain a better understanding of the case or to discuss wider issues arising from it.

I send complainers a detailed review report setting out the numbered Rules, what should have happened to their complaint at each stage, and what did happen. My aim is to talk the complainer through the correct procedure to help them understand how their complaint was handled and whether the procedure that was followed was correct or not. Within the restraints of a complex and jargonistic set of Rules, I aim to use a logical structure and clear language that puts users at the centre of the process. Once my review is complete, my draft report is sent to the Judicial Office for comments as to factual accuracy. My final report goes to the complainer and is copied to the Judicial Office for information. Where I find that the Rules were not followed, I also send a copy of my report to the Lord President, drawing his attention to any breaches and wider recommendations.

Even where the Rules were followed, there may be case-handling issues which need to be addressed. I bring these the attention of either the Judicial Office – if they are straightforward operational matters – or, if the issues are more fundamental, I write to the Lord President. I also bring to the Lord President's attention any issues relating to the Rules. In this way, the service for others can be improved.

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<sup>6</sup> The case file provided to me is incomplete. It contains only correspondence between the complainer and Judicial Office. Correspondence or advice between the Judicial Office, Disciplinary Judge, Nominated Judge or Lord President about the case is removed.

## Consultation on New Complaints Rules

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The Lord President intends to produce new Rules which set out how complaints will be handled. At the end of 2013 he consulted on his proposals. The biggest piece of work I undertook this year was to respond to that consultation. To inform my response, I undertook my own consultation by writing to 28 individuals who had made complaints using the 2011 and 2013 Rules. I received detailed replies from 18 (over 60%), to whom I am very grateful. Some sent an initial response followed by a more detailed one. Many included other documentation to support their views. All offered careful and considered

*“No amount of tinkering with the Rules will make a difference until the mind set within the Judicial Office changes... The judiciary should be setting the standard for others to follow. In that regard they should be making it as easy as possible to make complaints. Thereafter dealing with the evidence supporting the complaints efficiently, thoroughly and honestly and responding without fear or favour. This will enhance the reputation of the judiciary. The Rules appear to be a line of defence that are used to dismiss complaints. They are overly prescriptive and unnecessary in their*

responses based on their own experiences of the complaints system. They are, after all, the experts in this field. I found their insights invaluable in informing my own response. I also invited them to write directly to the Lord President with their views. I published the findings of my consultation on my website and sent copies to everyone who participated. To my knowledge the Lord President has not published any further information on his consultation and I have not received a response to my own submission.

I encouraged the SPSO (Scottish Public Service Ombudsman) to respond directly to the Lord President’s consultation, as

I was concerned that the formal list of consultees was too judicial-focussed and would benefit from the comments of those who have good experience of operating public sector complaints procedures. I informed the Judicial Office in Northern Ireland too, and I used social media to publicise it more widely to help ensure that the Lord President received a good response to his consultation.

My response included representative quotes from those I consulted in order to give a flavour of how the Rules are viewed by people who have actually used them right through to the review stage. Here I have included some

*“This was the first complaint against the Judiciary made by this organisation. The decision to complain was not taken lightly...I do believe the current Rules are constructed in an unhelpful and restricted manner that serves to deter complaints rather than try and engage with users of the Court. In raising these issues it is my hope that the Judicial Complaints process can be improved. This has been a frustrating and disannointing experience for my staff.”*

of the quotes, to give a sense of the views expressed. (You can see in full my response on my website.)

While I am grateful that I was able to join with the public in responding to this consultation, I was disappointed not to have been involved at an earlier stage, in order to influence the proposals which were eventually consulted upon. An invitation to work *with* the Lord President's office would have sent out a strong and positive partnership message to the public. It would also have created a valuable opportunity

*"The approach taken in the rules is to put a series of hurdles in the way of a complainant. If your complaint isn't dismissed at first stage it goes to the next stage - and if it's not dismissed then it goes to the next stage etc. The presumption therefore appears to be that complaints won't have merit and I would question whether this is fair and appropriate."*

to discuss how the Rules work and to share insights and observations from our different perspectives. (When the Rules in England and Wales were reviewed, the working group involved my counterpart there, the Ombudsman.) Going forward, I hope that the Lord President will see that the JCR can add real value to the complaints process and is happy to be involved in partnership working to bring about improvements.

Early involvement would have been beneficial, to help formulate the proposals rather than merely respond to them. Although I was broadly supportive of the suggested amendments to the Rules, my view is that they do not go anywhere near far enough. I sent the Lord President a list of recommendations on how to strengthen the Rules to ensure a fairer process for all. The revision of the complaints Rules provides a marvellous opportunity to create a new, more usable set of Rules that will help dismiss some of the negative perceptions the public have of

the current complaints process – that it is about judges protecting judges. I hope that the Lord President will listen to the views of those who have used the Rules in order to produce a new procedure that is fit for purpose and that he will work with the new JCR, Gillian Thompson, to achieve this.

*"... my experience of the Rules – they are not working, because they are stacked against the people they allegedly seek to serve. They are however, doing a grand job of serving and protecting the judges who are the subjects of the public's complaints. The statistics on the current Rules clearly demonstrate that they urgently require a complete, radical change of ethos. The minor tweaking at the edges of the current Rules as outlined in the Lord President's proposals is not nearly enough. Complaints about the judiciary need to be investigated and judged by a transparently independent authority, such as yourself [the JCR] if the public is to have any confidence in them."*

## Other Highlights of the Year

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In addition to the major piece of work around the Rules consultation, there were plenty of other things to keep me busy – aside from conducting reviews, which took up most of my time.

### **Employment Judges**

During the year a new issue arose which required investigation. Quite independently I received three letters from people who had complained to the President of Employment Tribunals (Scotland) about the conduct of an employment judge, who sought an independent review of its handling.

Upon consulting the legislation I discovered that such reviews are not within my remit. My enquiries established that there is no independent review mechanism for such complaints. At the first complainer's request I also liaised with her Member of Parliament, who asked Parliamentary Questions in Westminster on this matter.

I am concerned that there are judicial conduct complaints that are not subject to any form of independent review (from the JCR or any other person/body). All other members of the judiciary (with the exception of the Lord President) are covered by the complaints Rules and I may independently review the handling of complaints about them if requested to do so. This lack of external scrutiny in the case of employment judges is neither in the interests of the public nor the judiciary.

The Tribunals Service in Scotland told me: "Employment Judges sitting in Scotland are appointed by the Lord President of the Court of Session. They do not fall within the scope of the complaints provisions which derive from the Constitutional Reform Act 2005, nor do they fall within the scope of the provisions set out in primary legislative form in the Judiciary and Courts (Scotland) Act 2008. This situation has been drawn to the attention of the Lord President's Private Office in Scotland and the President believes that the matter is being considered further."

My counterpart in England and Wales confirmed: "Our understanding is that schedule 14 of the Constitutional Reform Act 2005 does not cover Legal members of the Employment Tribunals (Scotland). Nor are they referred to in the Judicial Conduct (Tribunals) Rules 2013. Consequently the Judicial Appointments and Conduct Ombudsman does not have a remit in respect of such matters. In addition we have made some enquiries and understand that there is no other body with a statutory

remit to review any aspect of the way in which the President of the Employment Tribunals (Scotland) has considered a complaint."

Scottish Government informed me that "the remit of the Judicial Complaints Reviewer to review complaints does not extend to reserved tribunal judges, such as employment judges. Employment law is a matter for the UK Government. Employment judges sitting in Scotland are appointed by the Lord President but it is for the President of Employment Tribunals (Scotland) to deal with complaints against employment judges. The Tribunals (Scotland) Act 2014 includes provisions for Conduct and Fitness (Section 36, and Schedule 8) and brings members of the devolved Scottish Tribunals in line with court judiciary covered by the provisions in the Judiciary and Courts (Scotland) Act 2008. However, the provisions in the Tribunals Act do not cover reserved jurisdictions."

I would strongly recommend to Government that provision is made for independent review of the handling of such complaints, to close this current loophole.

### **Extra Days**

I was able to use my additional days to reduce the backlog of cases awaiting review. Despite being unable to eliminate it altogether, I did successfully significantly reduce turnaround time for completing reviews. I was also able to find time to see Citizens' Advice Scotland to brief them on my work. I continued to meet with Scottish Government officials as necessary, and also held regular quarterly meetings with the Judicial Office for Scotland. These are helpful to address any wider issues and to talk about specific cases, although I continued to have case meetings too, where necessary. I was also involved with the Judicial Office team in a workshop to look at standardised letters. My use of social media continued through @JudicialScot on Twitter, which I use as a communications channel. It has a small but growing number of followers. I also tried to keep my website up to date by posting relevant documents (such as my annual reports, register of interests, and response to the Rules consultation).

I provided further written evidence to the Scottish Parliament's Petitions Committee on a register of interests for the judiciary during the year. I continue to be of the view that a register of interests would increase transparency, enhance public confidence in the judiciary, and reduce complaints numbers and review requests.

The JCR took part in a survey as part of a mapping study of UK ombudsmen and complaint handlers, a project funded by the Nuffield Foundation and administered by De Montfort University. The aim was to

identify, for the first time, the type and frequency of informal resolution used by ombudsmen and others in the complaint-handling field.

Unfortunately once more I was unable to meet others in the complaints review field, or to attend any training or development due to lack of time. It is easy in this role to become isolated and it is important that the JCR is able to keep their skills and knowledge about best practice in independent review up to date. I hope that my successor will have protected time for relevant training, development and networking so that she can best serve those seeking review.

I also had no time to engage in proactive media work, but have continued to respond to media enquiries as and when they arise. The Sunday Mail, the Sunday Herald, and now the Scottish Sun, have followed my work during the year. This is valuable in bringing it to a wide audience.

## Statistics: September 1<sup>st</sup> 2013 to August 31<sup>st</sup> 2014

During the year I received 33 new review request letters<sup>7</sup> and I undertook 29 reviews, including those carried over from the second year.

**Table 1: Enquiries, Review Requests and Completions Year 1: 2011/12**

Review requests received 2011/12	Reviews completed 2011/12	Enquiries received 2011/12	Reviews carried over from 2011/12 completed 2012/13
9 letters involving 20 reviews	4 letters involving 4 reviews	3 – all completed in-year	5 letters involving 16 reviews

**Table 2: Enquiries, Review Requests and Completions Year 2: 2012/13**

Carried over reviews completed 2012/13	Review requests received 2012/13	Total reviews completed in 2012/13	Enquiries received 2012/13	Reviews received 2012/13 carried over to 2013/14
5 letters involving 16 reviews.	30 letters made up as follows: 13 later withdrawn 7 not in my remit. Dealt with as enquiries	29 made up as follows: 5 letters/16 reviews carried over from 2011/12: 10 breaches 10 letters/13 reviews from 2012/13: 10 definite breaches and one possible breach	13 made up as follows: 6 (enquiries) 7 review requests dealt with as enquiries due to not being within my remit	4

**Table 3: Enquiries, Review Requests and Completions Year 3: 2013/14**

Carried over reviews completed 2013/14	Review requests received 2013/14	Total reviews completed in 2013/14	Enquiries received 2013/14	Reviews received 2013/14 carried over to 2014/15
4 letters involving 4 reviews.	33 letters made up as follows: 4 not in my remit. Dealt with as enquiries 14 carried over to Year 4	29 made up as follows: 4 letters/4 reviews carried over from 2012/13 15 letters/25 reviews from 2013/14	19 made up as follows: 15 (enquiries) 4 review requests dealt with as enquiries due to not being within my remit	14

<sup>7</sup> One letter may involve reviews of several different complaints made at different dates against different judicial office holders by one person. For this reason, I have recorded both the number of reviews undertaken and the number of letters seeking a review.

Not all review requests received during the year were completed by the end of August 2014, my year-end. I passed 14 outstanding review requests to my successor, the majority coming from the same individual.

Of the 29 reviews completed during the year, I found 36 definite breaches of the Rules. Most were minor in nature and the breaches did not affect the outcome of the complaint. There were two cases where although the Rules were not followed, it was impossible to identify the specific Rule which had been breached. In another case there was insufficient documentation to allow me to be confident that the Rules had been complied with, even though I could not say for sure that they had been breached. I also found that the Judicial Office's own guidance had been breached on ten occasions. You can read more detail in the Case Histories section.

Rule breaches: 2013/14	Rule breaches: 2012/13
36 definite breaches, two unspecified breaches and one case where it was unclear whether Rules complied with  Guidelines: breached 10 times  1 breach c/o from previous year	10 breaches c/o from previous year  10 definite breaches and one possible breach  Guidelines: breaches not counted in statistics

All review requests received to date (since 2011) have come from members of the public. I have never received requests from judicial office holders.

During 2013/14 I also received 19 enquiries, all of which were dealt with during the year. As in my first two years, there continues to be a high level of often time-consuming post-review correspondence (correspondence from complainers who wish to follow-up on my final determination, to ask questions, seek further advice or to raise new points).

I have not been able to accept all review requests, as 4 were outwith my remit. For example, in one case a complaint related to a JOH working in England. In another case, I was asked to review a complaint that had not yet completed the complaints process, so I was unable to accept it and classified it as an enquiry.

This year I received a 10% increase in review requests (33, compared with 30 last year) and I carried over a larger number of review requests to 2014/15. This is because last year 13 requests were withdrawn during the year, leaving just four to carry over. This year there were no withdrawals and a slightly larger case load, resulting in a carry-over of 14. This looks like a big increase but comparing like

with like, it is a reduction (last year's figure would have been 17 had it not been for the bulk withdrawal of 13 cases).

### Statistics in Context

To place the JCR's statistics in a context it is helpful to look at the Judicial Office for Scotland's complaints handling statistics for the last three years, since this new system came into force.

#### **Year 1: (a 13-month period to 31st March 2012)**

For the first year in which the Rules were in operation, 107 conduct complaints were made to the Judicial Office for Scotland about judicial office holders. 98 were completed during the year. Bar one, all were dismissed for various reasons before they reached investigation (they were deemed to be out of time, to be primarily about judicial decisions, to be insubstantial and so on). Only one investigation was carried out, following which the complaint was dismissed as "unsubstantiated".

#### **Year 2: (to March 31<sup>st</sup> 2013)**

114 complaints were made (and 9 carried over from Year 1. 116 were concluded (the 9 carried over plus 107 from Year 2). 11 went for investigation (four were still underway and 7 investigations were completed). Of the 7, one was withdrawn; 2 resolved informally; and 4 were reported to the Lord President. Of the 4 reported to the Lord President, 3 were deemed to be without substance, unsubstantiated or vexatious. For the one remaining complaint, an apology was offered by the judicial office holder and the Lord President deemed that no further action was required.

#### **Year 3 (to 31<sup>st</sup> March 2014)**

92 complaints were received during the year and a further seven were still in process when the year began. By the year-end, 13 complaints were active (seven still under consideration at the pre-investigation stage; four still under investigation; and two suspended pending ongoing judicial proceedings). Including the complaints carried over from the previous year, 85 complaints were concluded, including one which I referred to the Lord President in terms of s30 of the Judiciary and Courts (Scotland) Act 2008.

Of the 85 complaints concluded during the year, 10 reached the investigation stage. Two of these were withdrawn by the complainer at this stage, and four resolved to the complainer's satisfaction. That left four complaints which reached the Lord President. Three of these were found to be without substance or unsubstantiated. One complaint was substantiated but found not requiring formal action.

### **Three-year summary**

In just over three years of the new complaints regime, the Judicial Office's published statistics show that of 313 complaints received, there were 22 investigations. These resulted in one judicial office holder apologising for his or her conduct and no judicial office holders being disciplined. This may explain why no JOH has sought to have their case reviewed by the JCR: only a finding *against* the JOH would be likely to result in their making a review request. My previous experience of being a member of the review process in England and Wales bears this out: JOHs challenged when the finding is against them; not when it is in their favour.

## Case Histories

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Here is a summary of a selection of review requests received during the year, with the outcome and any issues highlighted. Many complaints concerned judicial decisions, and as such cannot be considered under the Rules. I have included details of the original complaint where relevant, and provided the Judicial Office with an opportunity to respond. Where provided, I have included their response. Cases are presented in chronological order.

- I have used the male gender to refer to all judicial office holders, given the relatively small number of female JOHs and the possibility of identifying them in these case studies.
- Where the same identifying letter appears in separate cases, it is a reference to the same individual having made multiple complaints.

### ENQUIRIES

This year has seen the number of enquiries increase from 13 in the previous year to 19. Most can be dealt with fairly quickly. For example, this year an MSP contacted me on behalf of a constituent, seeking information on how to make a complaint about a JOH. I gave him the necessary information. He then sought information about my role, and again that was quick and easy to provide.

Another typical example is the man who was unhappy with the conduct of a JOH and wanted to make a complaint. He made enquiries elsewhere and was told that his complaint, if made, would be dismissed as a judicial decision. He asked me to help him understand the difference between a judicial decision and judicial conduct. Although I could not advise on his specific case, I was able to explain the difference between judicial decisions in general and judicial conduct and to give him information on the complaints process.

Other enquiries are more complex and involve contact with multiple bodies. The enquiries relating to employment judges fell into that category. I received three such enquiries during the year, starting with Mrs X, whose husband complained to the President of Employment Tribunals (Scotland) as he was unhappy about the conduct of the judge at his employment tribunal hearing. His complaint was not upheld. Mrs X, on her husband's behalf, sought a review of its handling and contacted me in November 2013.

I had never received a request about an employment tribunal. A check of the legislation showed that such reviews were not within my remit. I made enquiries of the Judicial Office, my counterpart in England and Wales, the Scottish Government, and Employment Tribunals (Scotland) to establish who is responsible for independently reviewing such complaints so that I could point Mrs X in the right direction. Eventually I established that there is no independent review mechanism for such complaints. At Mrs X's request I liaised with her Member of Parliament, who asked Parliamentary Questions in Westminster on this matter.

In March, and also in April 2014 I received further review requests concerning employment judges. In both cases the complainers were unhappy about how their complaints had been handled. They provided details of their concerns.

Sometimes the JCR receives a review request that is outwith the remit. I deal with them as enquiries. One such was the case of Ms Z, who contacted me with details of various complaints that she had made. Further correspondence with her and the Judicial Office established that she lived in England. I was able to direct her to my counterpart in England and Wales.

## **CASE No. 1: Mr A**

### **1 review. 1 breach (Rule 5(2)(c))**

Mr A, a journalist who writes about criminal cases, attends trials as a member of the press. Sometimes a courtroom needs to be cleared if sensitive issues are to be discussed involving a vulnerable witness. Usual practice is that there is a screen to protect the witness and the press are allowed to remain even when the public are asked to leave for part of the evidence. Mr A believes that journalists should be allowed to stay and report on cases, preserving anonymity where necessary, so that justice is not only done, but is *seen* to be done.

Mr A attended a court case where the public *and* press were asked to leave. In his view the circumstances were similar to other trials where he had been allowed to remain. He compared one trial, where "normal practice was observed", with the one about which he was complaining. He said that as the press acts as the eyes and ears of the public, where journalists are asked to leave, reasons should be given and consistency maintained. He wrote: "Journalists are vital in any democracy but are powerless against any authorities who will say only: 'Because we can.'"

Sensitive trials can be difficult for those giving evidence and judicial office holders have the right to make decisions to hear cases in private. However, it is reasonable to expect a level of consistency from the judiciary across similar cases/circumstances and to expect that reasons for clearing a courtroom are provided to the public and to journalists.

Mr A raised a complaint about the JOH at the first possible moment, but sent it to the wrong place (the Justice Secretary). His complaint was not directed appropriately, which meant that when he finally lodged it with the Judicial Office for Scotland (JO), it was out of time and rejected. I wrote to Scottish Government to ensure that in future the Judicial Office is made aware of complaints about the judiciary that have been sent to ministers or departments.

My review found that with the exception of a minor technical breach, the Rules had been followed. However, I wrote to the Lord President asking him to consider providing advice to judicial office holders on clearing a court room, to encourage consistency. I also asked that JOHs be requested to provide reasons in situations where such action is necessary. Well-run complaints handling operations learn from the issues raised by complainers and share that learning with the wider organisation. This is a good example of where an unsuccessful complaint can nevertheless provide an opportunity for improving the way an organisation operates.

## **CASE No. 2: Mrs B**

### **1 review. No breaches**

Mrs B complained on behalf of her disabled son about the conduct of a JOH. Her complaint was outwith the deadline by a considerable time and the Disciplinary Judge was asked to consider whether the complaint could proceed. Her request for an extension was rejected for the reasons that the time gap could lead to poor recollection of events; that the alleged misconduct pre-dated the Rules; and that exceptional circumstances had not been demonstrated.

The Rules were followed, but I had criticisms of the handling of this case. I was concerned that no explanation was offered about how the decision about failure to demonstrate exceptional circumstances had been reached. I would also expect to have seen in the decision letter any consideration given to the issue Mrs B raised about her son's disability and the effect this inevitably had on his ability to prepare a complaint document. Mrs B followed up with some additional points, including two specific questions. The Judicial Office replied to her points but did not address her two questions.

### **CASE No. 3: Mr C**

#### **1 review. No breach of Rules. 1 breach of guidelines**

Using the correct fax number, Mr C faxed the Lord President twice in July 2013 with a complaint. Mr C then faxed a letter to me in August. I do not have a fax machine. His fax was received by the Scottish Legal Complaints Commission in Edinburgh, who passed it on. He told me that the JO was refusing to correspond with him. I contacted the Judicial Office, who replied that they had traced Mr C's faxes and had now acknowledged them and apologised for the delay.

The JO's guidelines state that correspondence should be acknowledged within five working days, which did not happen. I could not find that the Judicial Office had breached the complaints handling Rules, as there is no rule about timescales. (When the Lord President consulted on changes to the complaints rules, I suggested that there should be a timescale for responding to correspondence.)

It could be argued that this was a small administrative breach which did not affect the outcome of Mr C's complaint. However, having effective arrangements in place for receiving and acknowledging complaints is vital. I discussed this with the Judicial Office and have been assured that arrangements are now in place to ensure that this does not happen again.

### **CASE No. 4: Mr C**

#### **1 review. 1 breach (Rule 9). 1 breach of guidelines.**

This is similar in many respects to Case 3. It came from the same individual, and had also received no acknowledgement until he contacted me.

Mr C made four allegations. One concerned an alleged conflict of interest and failure to recuse. The JO deemed it to be a judicial decision, as recusal is a matter for an individual judge. While that is correct, if a judge with a clear conflict of interest which merited recusal chose not to recuse, it could potentially raise conduct issues. Mr C provided specific information relating to a family member of the JOH in question. For this reason, the Judicial Office should not have dismissed this part of his complaint at the initial assessment stage. It should have been forwarded to the Disciplinary Judge to take a view on whether the failure to recuse raised any issues of judicial conduct. I therefore found a breach of the Rules. I referred the matter to the Lord President, who revoked that part of the determination concerning recusal. He referred it to the DJ for further consideration. The DJ looked into the matter and found that there was no issue of concern.

Mr C also complained about the JOH's failure to give reasons. It is good practice to offer reasons for decisions, and in the interests of justice. However, that is a matter for judges and for this reason I found that the JO correctly followed the Rules when dismissing this part of his complaint.

#### **CASE No. 5: Mr D**

##### **3 reviews.**

**Review 1: 2 breaches (Rule 8 and Rule 9)**

**Review 2: 9 breaches (Rule 5 three times; Rule 8 (three times); Rule 9(4)(b) three times)**

**1 breach of guidelines**

**Review 3: 6 breaches (Unspecified Rule breach; Rule 6 three times; Rule 13(6); Rule 13(7))**

**Insufficient evidence on file to determine whether Rule 14 was complied with.**

This long and complex case involved three separate reviews. Some of the breaches were not significant, but this case did raise a number of concerning issues. The Judicial Office initially supplied an incomplete file. When my draft determination was ready I received a further 10 documents relevant to the review. I finalised my determination, whereupon further documents were produced. This was frustrating, added time to my review, and highlights the need for the JCR to receive unedited case files to review.

Mr D made three separate complaints on different dates about the same JOH.

#### **REVIEW 1**

Mr D complained that the JOH denied him access to two key witnesses on whom he was relying in establishing his innocence; and that the JOH had a long acquaintance with one of them, which he failed to disclose prior to the trial. Mr D was concerned that the JOH's impartiality was affected.

The JO did not inform the JOH of the complaint until *after* they had considered the allegations, in breach of Rule 8. Although a technical breach, it is reasonable that JOHs are informed of complaints made against them in a timely fashion.

The Judicial Office's initial assessment of allegations (Rule 9) is a rough sifting so that complaints that are clearly outwith the Rules can be excluded at an early stage. Mr D's complaint was dismissed under Rule 9(4)(b), as being primarily about a judicial decision. His complaint about the calling of witnesses is a matter for a JOH and was rightly dismissed.

However, one aspect of the complaint – that in making that judicial decision, a potential conflict of interest was not declared, potentially affecting the JOH's impartiality – is a grey area. It is a JOH's

*judicial decision* as to whether to recuse him or herself if there is a conflict of interest, but it would be a *conduct issue* if a JOH with a conflict of interest failed to declare it. Only further consideration of the facts would enable a decision on whether the JOH had taken a reasonable judicial decision in the circumstances; or had acted unethically in failing to declare a significant conflict of interest. For this reason the JO should have referred this aspect of the complaint to the Disciplinary Judge (DJ) for consideration under Rule 10, rather than dismissing it at the initial sift stage.

*The Statement of Principles of Judicial Ethics for the Scottish Judiciary* says of impartiality that a JOH “should carefully consider whether any litigation depending before him or her may involve the decision of a point of law which itself may affect his or her personal interest in some different context [other than pecuniary]”. Consideration should have been given as to whether the essence of Mr D’s complaint fell within that area. The Judicial Ethics guidance goes on to say “Where there exists some other reason, apart from pecuniary interest, why a judge should not handle a case on its objective merits, or may reasonably appear to be unable to do so, he or she should recuse himself or herself. Thus, for example, a meaningful acquaintance with a litigant, or a person known to be a significant witness in the case might constitute such an objection... Further, recusal would be necessary where a well-informed and fair-minded observer would consider that there was a real possibility of bias... If it is concluded that he ... possesses such an interest, but that recusal is not inevitable, that state of affairs should be declared to the interested parties at the earliest opportunity.”

Mr D was making just such a *conduct* allegation and thus a referral to the DJ was justified. I am not suggesting that the JOH *did* have a significant conflict of interest: I am saying that no decision could be reached without further consideration and as such, the complaint should not have been thrown out by officials. The Lord President did not agree with my finding.

## **REVIEW 2**

Mr D wrote again expressing dissatisfaction with the outcome of his complaint and raising further complaints about bias, “an outburst of racial bigotry” and breaches of his human rights. The JO breached their timescale guidelines when acknowledging this correspondence.

Mr D’s dissatisfaction at the outcome of his original complaint was addressed insofar as he was informed that the decision would stand. However, his new complaints were not addressed at all, leading to my finding of breaches of Rule 5 (three times), Rule 8 (three times) and 9(4)(b) (three times) regarding each of his three allegations.

### **REVIEW 3**

Nearly a year passed. Mr D made four complaints. That:

1. The JOH failed to recuse himself in a case where he had a conflict of interest which he concealed. This complaint had been addressed previously – see Review 1. It should have been dismissed under Rule 9(4)(c) as it had already been considered. The JO neither dismissed it nor proceeded with it.
2. The JOH disregarded supporting documentation (a new complaint). This complaint was out of time and should have been dismissed under Rule 6. Had Mr D made a case for exceptional circumstances (which he did not), the complaint should have been dismissed under Rule 9(4)(b) as being a judicial decision (it is up to JOHs to determine what evidence to consider). The JO neither dismissed it nor proceeded with it.
3. The JOH was guilty of racial bigotry. Mr D had raised this previously – see Review 2. When originally made, this was within the time limit. The JO erroneously overlooked. It should therefore have been considered immediately under Rule 10 rather than referred to the DJ under Rule 6.
4. The official record had been falsified to omit the racist comment (a new complaint). In relation to this complaint, the JO rightly advised that it was a matter for consideration either by the Crown Office and/or Police.

Complaint Number 4 was dealt with appropriately but the JO's handling of the first three complaints was muddled. Mr D's complaints were outwith the three-month deadline. He was invited to make a case for exceptional circumstances as to why his complaints should be considered. He was also advised that the matters he raised had already been dealt with, which was not an accurate statement. The failure to recuse (No. 1) had been dealt with, albeit not to his satisfaction, but No. 2 was a new complaint and No. 3, although made previously, had never considered.

Mr D explained that the delay in respect of No. 3 had been as a result of the Crown Office's alleged obstruction in providing the audio recording. The JO said that his complaint would be passed to the Disciplinary Judge (DJ) for consideration as to whether it should proceed despite being out of time.

The JO wrote again suggesting that Mr D was requesting more time to gather evidence. They would, if he consented, withdraw the complaint and leave it to Mr D to submit a fresh complaint in due course.

The Rules do not allow this, but in any case Mr D was *not* asking for more time. I do not have access to correspondence within the JO, so I cannot understand their rationale. Rule 17 covers withdrawal of a complaint by the complainer, but not by the JO. Furthermore, Rule 17(2) states that even if a complaint is withdrawn, “the disciplinary judge is to consider whether further consideration of an allegation of misconduct in it is appropriate”. The Rules were therefore breached, as the proper course of action was not followed, although I cannot identify which specific Rule was breached. The Lord President has made no comment on this breach.

Mr D accepted the withdrawal of his complaint as a “temporary solution” and reiterated his difficulties regarding the audio recording. (The Judicial Office could have informed Mr D that there was no need for him to secure the recording: they could obtain it as part of any investigation.) Despite his acceptance, the JO wrote again saying that as Mr D had concerns with the withdrawal suggestion, his complaint would proceed to the DJ under Rule 6. The JO’s actions are difficult to understand.

The JO said that as exceptional circumstances had been demonstrated, the complaint would be considered. In fact, Mr D had not made a case for exceptional circumstances. Mr D was informed that his allegation of misconduct would be investigated. It is unclear as to which of the remaining three allegations reference was being made.

Rule 13(6) says that the Nominated Judge (NJ) – the investigating judge – should issue both parties with a statement of the procedure for the investigation. This was issued by the JO, not the NJ. This is concerning, as there should be clear separation between officials and investigators. The JO explained to me that the letter was sent on behalf of the NJ by an official who provided administrative support to the NJ as part of her role. They acknowledged that this could give the appearance that the JO had an inappropriate involvement in the investigation of complaints and agreed that in future the person who provides support to the NJ will not have anything to do with the JO’s administration of the complaint.

As the JCR does not see the NJ’s file as part of the review process, I was unable to establish whether Rule 13(6) was complied with in relation to the procedure being shared in advance of the investigation starting.

Rule 13(7) states that after the investigation starts, the NJ should inform the complainer and JOH if he wishes to depart from the procedure in a material way. The NJ interviewed an additional witness, information which should have been shared with both parties in the interests of natural justice. The Lord President does not agree. Mr D notified the JO that he had seven witnesses, although none of his was interviewed.

Mr D wrote to the DJ seeking assurance that the NJ was not conflicted, given that he supported an interdict action against Mr D. The JO explained that the DJ could not become involved. Mr D wrote again but received no reply. As his complaints had come about in the first place because of concerns about a conflict of interest, the JO should have addressed these concerns. They told me that they did address this point when they wrote again, but that was two months later.

The JO informed Mr D that his complaint was without substance. He was not given a copy of the investigation report and received only minimal information about the investigation and the reasons why that conclusion was reached. The Rules say: "The Judicial Office's letter is to contain or be accompanied by such information as the Lord President considers to be appropriate for the purpose of giving the person complaining a fair understanding of the matters mentioned in paragraphs (2)(a) and (b)." This Rule is unsatisfactory. It does not require that complainers receive an explanation of how an outcome is reached; however, nor does it prevent it.

I raised this with the Lord President in relation to this and another complaint, and also when I responded to his consultation on the Rules, where I recommend the Rules are revised to ensure that complainers receive a copy of the NJ's report, unless there are very good reasons for not sharing it. In such cases, it would be reasonable to provide a summary containing sufficient information to enable an understanding of the investigation process, the evidence uncovered and how the decision was reached. The Lord President agreed that in future, complainers will as a minimum receive a summary of the investigation.

The Lord President wrote to the JOH saying that the NJ's report had been put before the DJ for review of the determination, and the DJ indicated that he did not require the NJ to reconsider any of his determinations. This information was not shared with Mr D. I raised this with the JO, who agreed to amend their standard letters so that in future, complainers will receive the same information as JOHs.

The Lord President considered my report and deemed that the breaches were either of a technical nature, or that he disagreed with them and that the original determination should stand.

## **CASE No. 6: Mr C**

### **4 reviews. 2 breaches (Rule 8 twice) Misapplication of the unacceptable actions policy**

This case involved four straightforward reviews, two minor technical breaches and one more concerning matter.

Mr C complained about a JOH. There was a minor breach of Rule 8 (the JOH was not notified of the complaint until after it had been considered). The complaint was about a judicial decision and was dismissed. Mr C wrote again restating his complaints in greater detail. This was dismissed as having already been considered (again the JOH was not informed).

My concern is that Mr C became the subject of the Judicial Office's Unacceptable Actions Policy, which was invoked after just two letters from him: one making the complaint and the other challenging the finding. No explanation was offered as to why the policy was being invoked. He had made complaints previously about other JOHs, but he is entitled to do that and in itself it does not necessarily amount to an unreasonable action.

## **CASE No. 7: Ms E**

### **1 review. 3 breaches (Rules 5, 8 and 9)**

The handling of this complaint was confused. Ms E faxed complaining of a JOH's "bad behaviour" and making reference to a previous complaint in 2012. Her letter was ambiguous: was the alleged bad behaviour a new complaint, or reference to her previous complaint? The JO decided she was referring to her previous complaint. However, where there is ambiguity, it is sensible to check.

Two days later Ms E faxed again, making reference to her "complaint against [name of the JOH]" in her earlier fax. She also raised concerns about the actions of a Sheriff Clerk. (As sheriff clerks are not judicial office holders – they are court service staff – they are not covered by the Rules. This aspect of her complaint was not addressed and she was not advised to contact the Scottish Court Service).

Despite there still being a degree of ambiguity, it seemed likely that a new complaint was being made. Ms E used the word "complaint". The Judicial Office treated both faxes as "general correspondence" although their reply was headlined "Complaint".

Ms E wrote again, once more referencing her “complaint against [name of JOH]” so there was absolutely no doubt by now that she was making a complaint. She said the JOH was causing her “trouble, stress and worries” and that “[I] feel that [the JOH has] an interest in this matter”. She did not specify or give examples of how the conduct caused her to feel that way; nor did she explain why she believed the JOH had an interest and should recuse himself. The JO replied, inviting Ms E to make a “specific complaint”.

Ms E had already made a valid complaint which should have been accepted under Rule 5. This did not happen, in breach of the Rules. The JOH was not informed, so Rule 8 was also breached. There was no initial assessment of the complaint, in breach of Rule 9. At this stage the JO could rightly have asked Ms E to be more specific, but they had in error not yet accepted that she had made a complaint.

Ms E wrote a fourth time about “bad behaviour” and failure to recuse, but provided no specific details. She said she had been denied a “fair hearing”. At this point the JO accepted that she was making a complaint. They asked for the date of the alleged misconduct (to assess whether Rule 6 applied); whether the case was ongoing (to assess whether Rule 9(6) applied); and they requested examples of the “bad behaviour” (so as not to have to dismiss the complaint under Rule 9(4)(a)).

Ms E wrote again saying that the JOH was failing to recuse, causing delays, blocking her evidence and refusing access to justice. When the JO acknowledged this correspondence, it was unclear which Rule it was being considered under. The JOH was then informed, and shortly afterwards Ms E’s complaint was dismissed as concerned primarily with a judicial decision or judicial case management or judicial management of court programming.

## **CASE No. 8: Organisation F**

### **2 reviews. 7 breaches (Rules 6, 8, 9(8), 12(1), 13(6), 13 5(b), and an unspecified rule breach)**

This case is difficult to summarise without revealing the name of the organisation (the complainer)<sup>8</sup>. Organisation F works closely with the courts. Over a number of years various members of staff within the organisation had difficulties with the conduct of a JOH, which they sought to resolve informally. The situation was ongoing but matters came to a head due to a cluster of incidents. A formal complaint was made to the Judicial Office about bullying.

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<sup>8</sup> Organisation F has approved the wording of this case study.

During the investigation, it came to light that the JOH had made recordings of court proceedings. Organisation F lodged a further complaint about these allegedly covert recordings of court proceedings (Review 2). The original complaints about the JOH were investigated - without Organisation F's witnesses being interviewed. It was not upheld. The complaint about covert recordings was not investigated. Organisation F was not told that it would not be investigated.

The Nominated Judge's (NJ's) investigation report was not shared with Organisation F9. Organisation F approached me with their concerns and sought an independent review.

## REVIEW 1

This review was complex, in part because initially I was sent an incomplete file. It was difficult to piece together the timeline of events. I asked the JO for documents that were clearly missing but they could not trace them. I had to obtain copies from the complainer. After my findings were drafted, the JO found a further 11 documents that had not been shared with me at the outset. Even with these, there were gaps. I could not work out whether correspondence was missing from the file, whether the NJ corresponded but had not retained the correspondence, or whether there had been no correspondence. The NJ failed to ensure that copies of all correspondence were placed in the complaints file that was passed to the Judicial Office – the formal record of the investigation. Although there is no Rule requiring this, I cannot see how the JCR can undertake a satisfactory review of complaint handling without access to full records. I recommended to the Lord President that he amend the Rules and/or produce guidance so that it is clear that the NJ must keep within the complaints file all correspondence, including notes of telephone calls, between the NJ and the complainer, JOH and JO to create a complete paper trail that allows the independent reviewer to understand what happened, when and why. I received no response to this recommendation.

Rule 11, among other things, requires the NJ to ascertain whether the complaint can be resolved informally. This was broached with Organisation F and the JOH. Both agreed to explore informal resolution, although it was never progressed and the investigation began.

Before an investigation starts, the nominated judge should issue both parties with a statement of the investigation procedure (Rule 13(6)). No formal statement was issued, but rather a procedure “evolved”.

Organisation F asked for either the tapes or transcripts, quoting Rule 13 5(b): “the person complaining and the judicial office holder are each to be afforded the opportunity to submit written comments on any information obtained by the nominated judge which he or she has not previously seen.” The NJ

responded that as the organisation was present at the hearings, the Rule did not apply. This response concerned me, as it appeared to be an unnecessary lack of transparency that could damage external confidence in the investigations process. Later, following deliberations with the Disciplinary Judge (DJ), that decision was revised.

At one point I found a lack of even-handedness in the handling of this complaint. The NJ wrote to the JOH apologising for the delay and adding: "I recognise that delay and uncertainty are unwelcome in the situation you find yourself". No corresponding concern was expressed to the organisation, who had on at least two occasions raised concerns with the NJ about the long timescales causing anxiety to staff. I suggested that the Lord President (LP) produce guidance for NJs on the need for even-handedness. I have received no response to the suggestion. The LP disagreed with my finding that even-handedness had not been shown.

Rule 13 5(b) requires that the JOH's detailed written responses to the complaint be shared with the complainer. This did not happen (originally I was not given a copy either). This meant that there was no opportunity for Organisation F to respond.

The NJ produced his investigation report for the DJ, although I have not been able to see any correspondence between the NJ and the DJ relating to this.

I do not have the power to overturn decisions, but I was concerned about how the conclusion was reached that the allegations could not be substantiated in light of the evidence that I saw in the complaints file.

The NJ did not interview Organisation F's staff to ascertain the effect of the JOH's behaviour on them. Whatever the JOH's intentions, Organisation F's staff clearly felt that his behaviour was at times inappropriate. It might be that without realising its impact, the JOH's personal style had a detrimental effect on those who deal with him. Such an issue could be addressed by training, pastoral advice or some other method. Equally, it could be that Organisation F's staff are over-sensitive. Interviews could have helped ascertain this.

I was also concerned about what appeared to be an inappropriate comment in the transcript. The JOH said, when one of Organisation F's staff was called, "Very well that should be enormous scope for fun." In his report the NJ wrote that he was initially concerned about this comment too. However, he offered no explanation as to why he was no longer concerned. It is reasonable to expect an investigation report to provide reasons.

## REVIEW 2

When the allegedly covert recordings came to light during the investigation, Organisation F wrote to the NJ saying that this was a matter of “importance” and that “If it is confirmed that our proceedings were recorded by [the JOH] without prior knowledge or consent of any party, this would be a matter of significant concern to the extent that it may form an additional element of our complaint.”

The JOH told the NJ that the recordings were not made “in any secret way” and although permission was not sought, no objections were raised. The purpose of recording was “to assist with note taking and as a protection against unjustified complaint.”

Later, Organisation F lodged a formal complaint, saying that they wished “this to be an additional element of our complaint as it raises further concerns regarding his conduct.” The Rules do not say what should happen when a new complaint is raised with the NJ during, and related to, an ongoing investigation. I have raised this matter with the Lord President and suggested that the new Rules currently being drafted rectify this.

At this point, Organisation F should have been informed of the JOH’s comments that his recordings were not covert, and they should have been allowed to comment on them or submit further evidence. This did not happen. The NJ accepted the JOH’s word unchallenged and wrote a one-sided account in his report that the recording was not covert. (The complainer never saw this report.)

The complaint about the recordings should either have been included as part of the ongoing investigation; or referred to the Judicial Office as a new complaint. Neither path was followed. The complaint was never investigated. No explanation was offered as to why not. I cannot identify which Rule was breached, as there is no Rule covering this eventuality, but clearly a complaint was made and not addressed, leading to my finding that an unspecified rule was breached.

The NJ was not convinced that the complaint about covert recording could be raised as part of the original investigation. He believed that it ought to form a separate complaint. No one informed Organisation F of this, nor that the Rules do not cover this eventuality, nor that they should make a fresh complaint to the Judicial Office. The NJ did not refer their complaint to the JO; nor did the Lord President, or the DJ. The complaint was quite simply not investigated.

When I sent my report to the LP, he replied to the complainer that this complaint would now be looked at. However, I have not been informed of the outcome.

## **CASE No. 9: Mr G**

### **2 reviews. No Rules breached. Guidance breached**

#### REVIEW 1

Mr G has been involved in a long-running family dispute involving custody of his daughter and had made a previous complaint. His latest concern was dismissed, as it concerned primarily a judicial decision. The JO explained their decision and I was satisfied that the explanation was sufficient to allow Mr G to understand their reasoning.

#### REVIEW 2

Mr G wrote again asking the JO to review their decision. He added that the JOH failed to take into account his severe dyslexia. The JO replied, but they missed their guidelines for responding to correspondence within five working days. The JO said that Mr G's letter mainly raised matters that had already been dealt with. I agree. They also rightly explained that they cannot undertake reviews. For this reason they correctly dismissed his complaint. They also rightly identified the dyslexia issue and explained what they would require should he wish them to take forward such a complaint. The JO stressed the need for Mr G to provide specific information on how his dyslexia was not taken into account by the JOH.

Mr G replied with further information about his dyslexia, including details about the diagnosis, but he did not provide specific examples of how the JOH did not take his condition into account. His complaint was dismissed by the DJ. Reasons for the decision were provided. Specifically concerns about disability discrimination were covered in the reasons. I was therefore satisfied that this complaint was handled in accordance with the Rules.

## **CASE No. 10: Mr H**

### **1 review. No breaches**

Mr H complained about a JOH, saying that his concerns were about conduct. The JO concluded that they about the JOH's decisions. They provided a brief reasoning for their decision was reached.

Mr H wrote again expressing his disappointment that the JO deemed that he had "not supplied sufficient information" to allow them to understand his allegation." He went on to give further details. The JO replied clarifying the contents of their previous letter, and adding that as he had not supplied any new evidence, his complaint could not be reconsidered.

It was clear that Mr H had misunderstood the JO's original letter, which was potentially confusing to someone unfamiliar with the Rules. However, I noted that its author did apologise if her letter was unclear. This case highlighted the need for the JO to consider further refining their standard letters. I discussed this with the Judicial Office, who responded positively and involved me in a workshop with the team where we looked at standard letters.

## **CASE No. 11: Mr I**

### **4 reviews.**

**Review 2: Breach of Rule 8. Breach of JO guidance on timescales for acknowledging correspondence**

**Review 3: Breach of Rule 8**

**Review 4: Breach of Rule 8. Breach of JO guidance on timescales for acknowledging correspondence**

Mr I made various distinct complaints at different times.

### **REVIEW 1: Complaint 1**

Mr I wrote to me with concerns about judicial conduct. With his permission I passed his complaints to the Judicial Office. The JO informed Mr I that in order to take his complaint forward, he had to specify which judges he was complaining about and provide an account of the misconduct allegations. He was advised of the three-month time limit and invited to submit a case for exceptional circumstances if the complaint was out of time.

He replied that it would not be appropriate to lodge the complaint until such time as various other matters had been dealt with by the courts. He asked that his complaint be deemed premature and not out of time.

The JO replied that they were unclear what his complaint was about and indeed whether he was making a formal complaint. The JO's letter specified what he needed to provide if he wanted to take forward a complaint and explained that only complaints about conduct could be considered. He did not reply by the deadline and his file was closed. All of this was in accordance with the Rules.

## **REVIEW 2: Complaint 2**

Mr I wrote again to complain about a JOH murmuring Scottish judges of the Supreme Court. No date was provided for the allegation, but reference was made to a newspaper article. Mr I implied that his complaint was out of time, explaining that he had not taken it forward as the JOH was presiding over a matter concerning him at that time.

Receiving no response, he wrote again. The JO replied outwith their five working days deadline, in breach of guidance. The JO explained that Mr I's complaint was out of time. Mr I explained that the reason he had not lodged a complaint was that he did not know that he could and in any case, even if he had, it would not have been considered until his legal case had closed; and that his case had most likely still not closed; and that it did not meet the grounds for dismissal; and it was of a serious nature.

The JO informed Mr I that his correspondence would be considered in accordance with Rule 6. The JO then informed Mr I that the Disciplinary Judge (DJ) had a conflict of interest and could not act as DJ. The Lord President was asked to nominate a new DJ and Mr I was informed that the new DJ was considering his complaints under Rules 6 and 10. Rule 6 relates to time limits. Rule 10 applies only after the allegations have undergone initial assessment and the JOH has been informed of the complaint. Confusingly there was no mention of Rule 10 in a subsequent letter. Nor was the JOH informed of the complaints, in breach of Rule 8.

Mr I's complaint was dismissed under Rule 6(4), meaning that despite the letter from the JO suggesting otherwise, it was never considered under Rule 10.

## **REVIEW 3**

Mr I complained about a JOH's conduct. He received no reply and chased a response, which came late in breach of the guidance. The JO explained that the complaint was out of time and set out the

procedure for making a case for exceptional circumstances. Mr I replied with his reasons and was informed that his correspondence would be considered in accordance with Rule 6.

As in the above case, the JO informed Mr I that the disciplinary judge (DJ) had a conflict of interest and the Lord President would nominate a new DJ who would consider the complaint under Rules 6 and 10. There was no mention of Rule 10 in a subsequent letter. The JOH was not informed of the complaints, in breach of Rule 8.

Mr I was informed that the DJ deemed that exceptional circumstances did exist and his complaint should proceed even though it was out of time. The complaint was then dismissed under Rule 10(4)(g).

#### **REVIEW 4**

Mr I complained about various JOHs, about lying and inappropriate laughter. His complaint was responded to belatedly, in breach of guidance. The JO asked him to specify the allegation and provide examples of the alleged misconduct.

The Disciplinary Judge had a conflict of interest and the Lord President was asked to nominate a new DJ. Mr I was then informed that his complaints were under consideration under Rules 6 and 10. The JOHs were not informed of the complaints.

His complaint was dismissed under Rule 6(4). Despite JO correspondence indicating otherwise, it was never considered under Rule 10.

#### **CASE No. 12: Mr & Mrs J**

##### **1 review. No breaches.**

Mr and Mrs J wrote to the Judicial Office raising a complaint about a JOH whom they believed was biased against them because they held what might be perceived as low-status jobs. They had made a valid complaint under the Rules, but the reply from the JO simply acknowledged the correspondence, with no mention that it would be considered under the Rules. The Judicial Office accept that they made a mistake in sending the wrong standard letter.

The Judicial Office carried out an initial assessment of the allegation under Rule 9 before passing it to the DJ for consideration under Rule 10. It would have been helpful if the JO had given Mr and Mrs J a plain English explanation of this next step, as the Rules are written in legalistic language that is not

suitable for the general public. I raised this with the Judicial Office, who agreed to look at how their standard letters can be improved. (Later I was invited to work with them on improving their letters.)

Some aspects of their complaint related to judicial decisions. For example, whether to give a custodial sentence, whether to delay for background reports or whether to prefer the evidence of one person over another. Mr and Mrs J stated that they were “not happy with the verdict” and again that cannot be considered under the complaints Rules. These matters should have been identified during the initial assessment and communicated to Mr and Mrs J with an explanation of why these elements of the complaint could not be considered. This did not happen. I raised this with the JO.

Other aspects of the complaint concerned conduct or behaviour – matters that *can* be considered under the Rules. For example, Mr and Mrs J said that the JOH was “really nasty”, he was “abusing us” and “started on us that we were all liars & not credible witnesses as my husband is only a [job title] & I’m a [job title].”

The JO sought further information from Mr and Mrs J, although in view of the impending festive period the time allowed to respond was too short. However, the couple did meet the JO’s deadline. The JO enquired about the alleged comment made by the JOH in relation to their occupations. The JO rightly needed to clarify exactly what was said. That is because if a JOH says that he prefers the evidence of one person over another, that is his decision – a *judicial* decision. However, if the JOH says that he prefers the evidence of one person over another because one has a high status job and is therefore more credible – or one has a perceived low status job and is therefore “a liar” – that is potentially an issue of judicial conduct that should rightly be considered under the complaints Rules.

For Mr and Mrs J’s complaint to be considered, it was important to establish whether they merely *felt* that the JOH perceived them to be less credible because of their occupations, or whether this is what he actually *said* in court – including using the word “liar”. That is why the further enquiry was made. When they wrote to Mr and Mrs J, the JO were not as specific as they could have been in explaining what they needed to know. I discussed this with the JO, who told me that they do not wish to guide a complainant down a particular route. I accept that they should not guide complainants. However, proactively establishing the specific issues of concern is important.

When Mr and Mrs J replied, they did not specify the words used by the JOH so the JO wrote again to seek this information. Again the Js’ reply was not as specific as it needed to be. Without clarity on what was actually said, it was not possible for the complaint to be taken forward.

I do not know what kind of deliberations were undertaken by the DJ or what advice the JO gave him. I do not have access to this information. However, the complaint was dismissed. The JO wrote: "In your letter you seek to complain about [name of JOH] because [my emphasis] he found you, your wife and son guilty after trial." I do not agree that that was the thrust of the complaint. They were complaining because they believed that they were seen as less credible because of their occupations.

#### **CASE No. 12: Miss K**

##### **Breaches: Rule 10, Rule 8. Breach of JO guidelines regarding timescales**

Miss K was involved in a long-running dispute about land, which culminated in a hearing of the Land Tribunal. She had concerns about the hearing and complained. This was out of time (although she argued that it was in time).

I was assured, from correspondence and a face-to-face meeting with the Judicial Office, that this complaint was given very thorough consideration. However, I am critical of its handling because the various steps that were followed were not clearly communicated to Miss K. The JO appeared at times to be confused as to what procedure was being followed and it was impossible for Miss K to follow what was happening to her complaint. Despite my concerns about the handling of this complaint, the mishandling did not affect the eventual outcome.

The DJ decided not to allow Miss K's complaint to proceed out of time, but the letter communicating this was confusing. It seemed to suggest that the DJ had looked for evidence to support the allegation, although that is the purpose of an investigation, not a consideration of whether to allow a complaint to proceed out of time. It also suggested that the complaint was dismissed in terms of Rule 10(4)(f) as without substance, but there is nothing in the correspondence to suggest that it was being considered under Rule 10. In any case, it could not be considered under Rule 10 if it were not allowed to proceed under Rule 6.

The DJ's reasons for not allowing it to proceed were unclear. The JO's letter indicated that as the complaint would be dismissed in any case, it should not be considered outwith the timescales. However, the two considerations are unconnected. First a decision is taken as to whether exceptional circumstances apply. Reasons should then be given if exceptional circumstances do not apply, but I am unclear as to what those reasons were.

Reference is made to the *Statement of Principles of Judicial Ethics* having been considered, but again no further detail is provided to explain why that document was considered at that point in the process, which aspect and with regard to which part of Miss K's contention that her complaint was in time.

Notwithstanding all of the above, Miss K did not even make a case for exceptional circumstances. Quite the reverse: she argued that her complaint was *in time*. That point was not addressed in the JO's response.

The JOH was informed that a complaint had been made, but Rule 8 applies only in the case of complaints which have not been dismissed under Rule 6. Therefore the notification of the JOH was premature and, technically, a breach of the Rules.

### **CASE No. 13: Mr C**

#### **Breach of Rule 5, 8, 9(4)(d)**

Mr C faxed three complaints letters in October 2013: two to the Judicial Office and one to the Lord President's Office. His complaint went astray and was not considered for over four months. Although the Rules do not state a timescale for consideration under Rule 5, a delay of over four months in my view constitutes a breach.

It is concerning that the complaint went missing. I discussed this with the JO, who explained that due to staffing changes there is no one who can explain what happened. I have been given assurances that there are now procedures in place for logging all incoming mail to avert a similar situation in the future. Once the correspondence was located, the JO progressed matters as quickly as possible.

Due to the complaint being mislaid, Rule 8 was breached in that the Judicial Office did not send the JOH notification of the allegation for over four months. Furthermore, he was notified only after it had been considered under Rule 9. This is a technical Rule breach which did not affect the outcome of the complaint. Consideration of Rules 8 and 9 together, in these circumstances, is a more efficient way of handling complaints, so although I found that there was a breach, and I am critical of the JO for mislaying the complaint, I make no criticism of them for considering Rules 8 and 9 together. Indeed I would like to see the new Rules allowing more flexibility in this respect.

In his correspondence Mr C had disagreed with the decision to dismiss his earlier complaints. The JO stated that his dissatisfaction with their decision raised a matter which fell under the functions of the Judicial Complaints Reviewer. I disagree. I do not have the power to overturn decisions, although I can

look at and question a process that leads to a potentially wrong decision being reached. Mr C's disagreement with a decision is not in itself a matter for my consideration.

#### **CASE No. 14: Mr L**

##### **Breaches: Guidance**

Mr L complained that when he appeared in court, the JOH huffed and puffed and put his head in his hands. He said that he was made to feel to feel like "some worthless underling" even though the JOH knew that he suffered from Post Traumatic Stress Disorder. Mr L stated that he faced difficulties because he was representing himself and that the JOH should have displayed greater understanding of his situation. He said that he believed the JOH needed some training.

The receipt of Mr L's complaint was not straightforward. He emailed his complaint to a number of different bodies, including Scottish Ministers, the Scottish Parliament and the body in London that deals with complaints about the judiciary in England and Wales. His complaint was also copied to me and to the Judicial Office for Scotland (JO).

With Mr L's permission I forwarded his complaint to the JO and advised that he should hear from them within five working days. The JO told me the forwarded complaint had not been received. I made further attempts to forward his email, eventually pasting the contents into a new email. I was advised that the JO would acknowledge receipt to Mr L that day or the following day.

Mr L told me that he had not received an acknowledgement from the JO. I forwarded his latest email and wrote to the JO to check that they had replied to him. They assured me that they would. Given the long time-span involved, I found that the JO had breached its own guidance for responding to correspondence.

Given the difficulties that both Mr L and I faced in getting our correspondence through to the JO by email, I discussed administrative systems and IT settings with the JO. They assured me that there is no spam filter in their IT system, so I was unable to understand why difficulties were experienced.

The JO informed Mr L that his complaint was considered under Rule 10 and dismissed as being "insubstantial." Reference was made to a document called *Statement of Principles of Judicial Ethics for the Scottish Judiciary* (the *Statement*). This document, published by the former Lord President in 2010, provides guidance for JOHs about their conduct. The *Statement* says, as reported to Mr L, that judges at times must be assertive, firm or direct.

However, the document also states that “discourtesy, or overbearing conduct, towards those appearing in court as counsel or witnesses, is to be avoided. The judge should seek to be courteous, patient, tolerant and punctual and should respect the dignity of all. He should try to ensure that no one in court is exposed to any display of bias or prejudice.” I could not see evidence that the need to be courteous, patient and tolerant was considered by the DJ.

I discussed this case with the Judicial Office, who explained that Mr L’s appearance before the court was for an initial pleading diet. After it was ascertained that he was pleading not guilty, it was left only for the court to assign an intermediate diet and trial diet. They said that he may have not appreciated the very limited nature of the hearing. The JOH may well have had to be assertive to ensure it was clear what the court was dealing with that day. I take on board this comment, but surely a JOH should be expected to explain clearly yet courteously the purpose of each stage of the judicial process, particularly in the case of those who, like Mr L, are not legally represented. There will be times when a JOH may have to be firm or assertive in their management of the case. When a complaint is made, it can be difficult to assess whether the JOH’s behaviour was the normal, possibly assertive behaviour necessary in ensure the smooth running of the court; or inappropriate, intimidating or unacceptable behaviour that leaves people feeling as Mr L says he felt. Perception is also a factor: what one person may find completely reasonable, another may find unacceptable.

Without investigation, it is impossible to decide what happened. Mr L may have been over-sensitive, or the JOH may have been over-bearing – or perhaps it was a mixture of the two. However, the DJ came down on the side of the JOH without any investigation, effectively saying that even if substantiated, the conduct would not warrant disciplinary action. I believe the public would find it hard to understand how it is considered acceptable for JOHs to huff and puff, to put their head in their hands, and to behave in a way that leaves people feeling like worthless underlings. I note, in any case, that Mr L suggested that this was a training issue, yet no consideration appears to have been given as to whether any training was necessary.

The JCR cannot overturn the DJ’s finding. However, given my concerns about the lack of an audit trail and reasoning to explain how the decision was reached – particularly in relation to any evidence that consideration was given to the requirement for patience, tolerance and courtesy, and the lack of consideration for the suggestion about training – I referred the case to the Lord President even though the Rules had not been breached. He replied to Mr L that I had strayed beyond my remit.

## **CASE No. 15: Mr M**

### **Breaches: Guidance**

Although there was no breach of the Rules, this review left me confused as to how Mr M's complaint was handled. The file did not enable me to understand what happened when and why. It seems that Mr M was having ongoing correspondence with the Lord President's office about an Opinion (although I was not given any correspondence which predated his formal complaint).

He finally decided that a formal complaint was necessary and clearly stated this in the first paragraph of his letter, sent on 16<sup>th</sup> March. As he was now making a complaint, and the Judicial Office (JO) handles complaints on behalf of the Lord President (LP), his correspondence should have been forwarded to that office. I was unable to ascertain from the files the date when his complaint was passed to the JO. However, complaints should be acknowledged within five working days but Mr M did not receive an acknowledgement until well beyond the target timescale.

Mr M followed up with further correspondence, which was not acknowledged at all. The first acknowledgement on file does not mention the complaint made on 16<sup>th</sup> March but acknowledges a complaint "sent 20<sup>th</sup> April." However, there was no complaint of that date in the file. This is confusing. I am critical of the JO and the LP's office for their interactions regarding this complaint. Either the LP's office was slow in forwarding the complaint, or the JO in acknowledging it. Either way, there is a lack of paper trail explaining what happened, when and by whom. I raised this with the JO, who assured me that they now have procedures in place to ensure that this does not happen again. I also wrote to the LP's office to seek assurances that there is now a proper procedure in place for forwarding complaints in a timely fashion and recording in the file the details of when this occurs. I have to date received no response.

The JOHs were informed that a complaint had been made, and supplied with a copy of the complaint as is required by Rule 8. However, they were also informed that the JO would "only be considering Mr [M's] four main points on page one of his complaint." When the JO wrote to Mr M on the same date, he was not informed of which aspects of his complaint would be considered, which would not be considered, and why.

I have previously suggested to the JO that it is best practice to identify at the outset which parts of a complaint can be considered and which parts cannot. Along with clear reasons, this should be shared with both parties. I am concerned that in this case the JOHs were informed but the complainer was not.

## APPENDIX 1

### Who is the Judicial Complaints Reviewer?

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The current Judicial Complaints Reviewer is Gillian Thompson OBE, but Scotland's first JCR was Moi Ali (pictured). Moi held the office for the period of this report, until 31<sup>st</sup> August 2014.

Moi works as a communications consultant and author and also has a number of roles in public life. She spent seven years on the Nursing and Midwifery Council, where her mission was to put public protection and involvement at the heart of healthcare regulation. She also served for six years on the Board of Postwatch, championing the interests of 'hard to reach' consumers and chairing its independent complaints review panel. She continues her role in postal complaints as a member of the Council for the Postal Redress Service in London.

Moi spent six years as a member of the Office for Judicial Complaints' review bodies in England and Wales, until 2012. There she worked alongside judges and magistrates reviewing judicial conduct complaints on behalf of judicial office holders. Currently she is a member of the Scottish Ambulance Service Board, a member of the Scottish Police Authority Board, and a member of Education Scotland's management board.

In a voluntary capacity Moi is a Governor at Edinburgh Napier University and undertakes voluntary work advising the Education Law Unit in Govan on governance and communications for one of its national projects.

## APPENDIX 2

### Register of Interests

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In the interests of openness and transparency, I am publishing this register of interests to cover the period up to 31<sup>st</sup> August 2014, when I stepped down as JCR.

#### **CURRENT/PREVIOUS MINISTERIAL APPOINTMENTS** (including remuneration for current appointments)

<b>Name of Organisation</b>	<b>Position held</b>	<b>Period of Appointment</b>
Scottish Police Authority, Glasgow	Board Member. Member of Audit and Risk and Complaints/Conduct Committee	2012-present £300 per day
Scottish Ambulance Service, Edinburgh	Board Member. Member of Audit and Risk and Staff Governance Committees	2010-present £8,008 per annum
NHS Lothian , Edinburgh	Board Member	2008
NMC, London	Board Member and latterly Vice President	2001-2008
Postwatch, London	Board Member	2001-2006

#### **CURRENT/PREVIOUS PUBLIC and CHARITABLE APPOINTMENTS** (including remuneration for current appointments)

Centre for Health and Wellbeing (charity and social enterprise company), Edinburgh	Director and Chair (unremunerated)	2008-2010
Review Bodies, Ministry of Justice, London	Member	2006-2012
Edinburgh Napier University	Court Member/governor. Chair of Health & Safety Committee, member of HR committee	2009 – present Unremunerated
Education Scotland	Management Board Member Audit Committee member	2010 - present

		£272 per day
Education Law Unit, Glasgow	Member of Project Delivery sub-committee	2013 to present Unremunerated
Cabinet Office, London	Diversity Ambassador and mentor (Government Equalities Office)	2010 to 2014 Unremunerated
Postal Redress Service (POSTRS), London	Independent Council Member	Daily honorarium of £275

## FINANCIAL INTERESTS

- Business: I own my own business, the Pink Anglia Public Relations Company.
- Shares: I own shares in Iberdrola valued at approx. £1,150
- Property: I own a rental property in West Lothian and a property in central Edinburgh, in addition to my home.

## POLITICAL ACTIVITY

### During the last 5 years

I have not stood for or obtained office as local councillor, MSP, MP or MEP; or spoken on behalf of a party or candidate; or acted as a political agent; or held office such as Chair, Treasurer, or Secretary in a local branch or party; or made any donations to any political party.

I have canvassed and helped at elections. In the 2010 General Election I participated in leafleting and knocking on doors to encourage more women to vote, as part of Liz Bardell's (SNP) election campaign for the Livingston constituency. I have also helped on a small number of occasions to deliver leaflets and newsletters in West Lothian with Angela Constance MSP (SNP), Minister for Youth Employment, although not since 2012. In the Independence Referendum 2014 I was involved in social media in support of the No Campaign, as a private citizen.

## GIFTS AND HOSPITALITY

I have neither declined nor received any gifts.

During 2012/13, I attended court suppers with Professor Dame Joan K. Stringer DBE, BA (Hons) CertEd PhD CCMI FRSA FRSE as a member of the Court of Napier University (and since 2014, her successor, Prof. Andrea Nolan OBE) and I received invitations for and attended a variety of Court social events in my capacity as a governor.

Since joining the Scottish Police Authority Board in 2012 I have attended various meetings and engagements at which the Chief Constable Sir Stephen House QPM and other senior officers have been present.

### **FRIENDSHIPS/RELATIONSHIPS**

I do not have any friendships, relationships or business dealings with any judicial office holder, Scottish Court Service employee, police officer, police staff or SPA employees.

Baroness Clark of Calton, a judge of the Court of Session, was until June 2013 a member of Napier University's Court on which I also serve but I had no contact with her other than at Court meetings and University events. She has been replaced at the University by Lord Brodie. I played no role in the appointment.

I am not aware of any conflict of interest with my appointment as Judicial Complaints Reviewer, either personally, or relating to my connections with any organisations.

I confirm that the information I have provided is, to the best of my knowledge and belief, true and complete.

**Moi Ali**  
**Judicial Complaints Reviewer**  
**August 31st 2014**