



2014/2015 Review

1st September 2014 to 31st August 2015

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Forward

I am pleased to publish a review of my first year in office. I understand that there has been some disquiet expressed about potential reasons for my not having done so sooner. I regret that the time taken has allowed various parties to suggest that there may be something untoward. I had hoped to publish in Spring this year. The issue that I have grappled with is simply the paucity of time available to carry out the functions of the office. I apologise to anyone who tried to contact me by email about this report between 1 September 2016 and 4 November 2016. I was excluded from my email system during this period due to a technical hitch.

On taking up the post on 1 September 2014 I was confronted with a backlog of 14 review requests, some dating back as far as April that year. I understand that it had been decided by Scottish Government that immersion (as I later heard it described) was more appropriate than allowing my Moi Ali my predecessor to complete the reviews. The result was that it took me until April 2015 to work my way through the cases whilst learning the ropes and trying to get to grips with some knotty IT issues. During the 1 September 2014 and 7 April 2015 I accrued a backlog of 12 cases. All of which meant that I was continually having to apologise to complainants for the delay.

Managing a demand led service within a restricted number of days inevitably means that responsiveness suffers. That earlier experience persuaded me that it was right to give priority to reviews given that I am working within the dual constraints of the number of days available for carrying out the work and no administrative support. Indeed, as I note Scottish Government confirmed recently, there has

hitherto been no time requirement for a report on activities. I would go further and say that the terms of my functions set out in the contract refer only to “As directed by the Scottish Ministers to prepare and publish reports on investigations” which by any standard is open to interpretation. That said, I have now been directed by Scottish Ministers to produce a report annually covering the period 1 September and 31 August. This is helpful. I am required to provide my report for 2015/16 in December 2016.

Reflecting on my experience in this first year I have a number of concerns about the way in which the role of Judicial Complaints Reviewer works:

- I see only what is shared with me about the handling of complaints. In cases where an investigation is carried out by the Disciplinary Judge I not automatically get access to all papers.
- The singleton nature of the role together with the limited number of contracted days results in a poor service, relatively speaking
- Whilst the functions of the role meet the requirements of the legislation I doubt that they fully meet the expectations of those that use the service or the wider public

I recommend that Scottish Ministers reviews the relevance of the role as it exists.

;Overview of the year

This is my first Review report.

As with any new role, I did not have a clear view as to how the work would develop. When I took up post on 1 September 2014 I inherited a backlog of 14 cases which took time to clear whilst learning on the job. I also had some initial difficulty with accessing my website and understanding how to make updates to it (sadly this was a theme of the year). I eventually was able to make some modest changes to the website to update information. I added a telephone number in order to improve my contactability. I aimed to respond to texts and voice messages within 5 working days. In reality, during this period, I looked at emails and checked for voice messages every couple of days so as to keep things moving. Consequently, the role felt much more like full-time. It was only in the Spring of 2015 that I began to feel that I was able to provide a reasonably swift and efficient service and able to deliver something approaching the level of service to which those seeking review should be entitled to expect.

In this way I managed the steady flow of requests for review of the complaint handling by the Judicial Office for Scotland (JOS) under the relevant Complaints About the Judiciary (Scotland) Rules. I am grateful to the Scottish Government for agreeing to pay me for additional days over and above the up to 3 days per month that are allowed for within my employment contract. In Resources on page ? I have set out the number of days for which I was paid in this period. However, I spent considerably more effort than this in the early part of my contract and on reflection I decided that it was not appropriate to apply even more additional effort to the role. After all the scope had been considered during the passage of the relevant legislation and subsequently the Scottish Government had re let the contract on the same terms

despite the advice of the previous JCR that the resources available were insufficient.

Overall, in reviewing the handling of complaints by JOS based on the information available to me, I found little to criticise by way of handling within the Rules.

I noted some spelling mistakes and other careless errors in letters issued by the JOS which made it look like there was a lack of care in considering complaints. However, JOS took on board my comments and the mistakes became less frequent.

There were a couple of cases where the Rules had not been followed to the letter but omissions were minor and the result was beneficial to the complainant and I deemed there to be no action required. I have taken this as a positive result of the work of my predecessor, Moi Ali, and the consequential changes to practice within the JOS. Anyone working within the complaints handling environment will agree with me that complaints and their proper use should lead to improvements in service.

The current JCR

My name is Gillian Thompson and I have been in post as the JCR since 1 September 2014. My background is in public service. I worked for the Scottish Office, the Scottish Executive and the Scottish Government, respectively, over a period of 36 years. During that time I worked in various customer service and policy development roles and for 7 years (September 2002 to September 2009) was the Accountant in Bankruptcy and Agency Chief Executive (Scotland's Insolvency Service).

I was appointed as the Judicial Complaints Reviewer by Scottish Ministers with the agreement of the Lord President. I operate independently of government and the judiciary.

The Role and Remit of the Judicial Complaints Reviewer

The role of the Judicial Complaints Reviewer (JCR) was created by the *Judiciary and Courts (Scotland) Act 2008*. The sole purpose of the JCR is to review the handling of investigations into complaints about the conduct of members of the judiciary – judges, sheriffs and justices of the peace.

The investigations are carried out on behalf of the Lord President, the senior judge in Scotland, by the Judicial Office for Scotland (JOS). In the first instance a complaint has to be accepted as a complaint under the Rules. If a complaint is not accepted by the JOS I cannot consider it and I would have no information available to me to question such a decision.

The relevant Complaints About Judiciary (Scotland) Rules can be found under publications at www.scotland-judiciary.org.uk

Once the process has been completed a complainant can ask me to investigate whether JOS followed the Rules appropriately. This must be done within 4 months of the date of the determination by the JOS.

My remit is very narrow. I am able to review the handling of the complaint but only as a paper based exercise based on selected case papers provided to me by the JOS.

I cannot look at the merits of a complaint and I cannot require a complaint to be reinvestigated or overturn a decision. Nor can I obtain compensation, apologies or other redress. I can however make referrals to the Lord President where I find the Rules have been breached so that he can consider what action may be required.

From my observations the majority of those who ask me to review the handling of their complaint do so because they are unhappy with the outcome of the court process. In other words they do not agree with the decision reached in their case. I do not believe that it is clear enough that complaints can only be made about the conduct of a judge. However, the current Guidance Leaflet published by the JOS helpfully sets out examples of what can be investigated under the Rules.

The following conduct can be investigated:

The use of racist, sexist or offensive language

Falling asleep in court

Misusing judicial status for personal gain or advantage

Conflict of interest

In each case evidence must be provided. Some complainants have told me they felt the judge was rude to them or treated them without respect either by speaking harshly or seeming not to be interested in what the complainants had to say. Are judges rude and impatient? Yes probably. But if evidence is not provided that leads JOS to accept that something has taken place that should not have done it is open to JOS to take the view that whatever behaviour is alleged is simply part of the judges handling of the case or his/her decision on the case. The JOS publishes statistics about complaints, including those where action has been taken against a judge.

For completeness, the following are examples of what cannot be investigated under the Rules.

A judgement, verdict or order

Sentencing decisions

What evidence should be, or has been considered

Whose attendance is required in a hearing

Who should be allowed to participate in a hearing

Allegations of criminal activity (which should be directed to the police)

With the exception of the last issue, all are related to the decisions taken by the judge about his/her determination and/or management of the case.

What Happens to a Review Request?

The majority of requests for review arrive by letter, a few come in by email and others come through the website. I have had a couple through telephone requests.

I also get enquiries from people who need to be redirected or are looking for information about the office etc. I deal with enquiries immediately so as to move them along quickly particularly if not in my remit.

I secured the provision of a desk in the government office at Victoria Quay (VQ) in order to keep people's data in an appropriate environment and I introduced the option to speak to me by telephone. Otherwise I have not altered the process set up by my predecessor.

Reviews

I determine if the request is within time. If not I write to refuse and offer to consider exceptional circumstances for the delay. I open a file for those review requests that I accept. I acknowledge receipt and explain the process/seek additional information/say something about my role and how long the complainant can expect to wait for my review report. I request the relevant papers from the Judicial Office for Scotland (JOS).

I review the complaint handling on a strict first come first served basis which is the fairest position all around. The review consists of reading the correspondence that comes from the complainant plus the paper file from JOS in tandem with the relevant Rules.

How long each case takes depends on the complexity. Generally, during my first year, I assumed 1.5 days per case.

Once I have reached a view on the case I write the review report which can extend to 3 or 4 pages and a covering letter. To speed the process I cut and paste as appropriate. As agreed with JOS I send the report and letter to them for information and any observations. So far I have not had to consider my response to a request for change to the text.

Housekeeping/other work

I have done little on the website other than the odd update. I responded as needed to requests for information, opinion, interviews, meetings as they came in with the consequential impact on case management.

Resources and effort

The JCR role is a singleton post with no administrative or IT support. This means that the post holder must carry out all functions from reviewing the handling by the Judicial Office for Scotland of individual complaints through to sticking stamps on.

I have been provided with a desk in Victoria Quay , Edinburgh. This is a Scottish Government office and provides the appropriate security for the data I hold about complainants. Files etc are stored in a locked cabinet and I hold the only key. However, during this period the working environment was open plan and noisy which I found a little difficult given the nature of my review work. Consequently, I worked between 4 to 5 hours at the office and completed the 8 hour day at home. This allowed me to print reports and letters at my own hand which helped with editing and checking before issue.

I also have a Scottish Government laptop and Blackberry and have ordered a small amount of stationary by arrangement with the Sponsor Team in the Justice Directorate.

Any costs that I have incurred have been covered directly by SG. I assume that they have been deducted from the £2,000 attributed to the administration costs of the post. Beyond these costs I claimed:

Travel (handover meeting) - £25.83

Parking (meeting at St Andrews House - £6.00

Postage and packaging - £41.49

Again I assume that these costs have been deducted from the £2,000.

During the year I was paid for a total of 58 days. 32 days at the daily rate of £213 and 26 days at the daily rate of £215. The additional 22 days I agreed with the Scottish Government were a reflection of the

backlog situation. On 1 September 2015 I reverted to working to contract, that is up to 36 days.

The total cost to the public purse was £12,479.32.

Outward facing activity

I had early meetings (September 2014) with the former Lord President (Lord Gill) and the then Cabinet Secretary Kenny MacAskill MSP.

I met with the Minister for Community and Legal affairs, Paul Wheelhouse MSP, on 15 January 2015.

I had several meetings with the team at the Judicial Office for Scotland which were useful for updating on the progress of work in hand.

I wrote to the Public Petitions Committee on 12 January 2015 in reply to a request for my view on the petition advancing the view that there should be a register of interests for Judges. See Annex A. I subsequently gave oral evidence on 23 June 2015.

The Lord President published a revised set of Rules on 1 April 2015, the Complaints About the Judiciary (Scotland) Rules 2015. I provided some relatively minor comments on the final draft but, I'm pleased to say that the efforts of Moi Ali in response to the consultation are reflected to an extent in the 2015 revision in a number of areas.

As a member of the Association of Ombudsmen I was invited to various meetings and seminars. I did not attend any.

Statistics: 1 September 2014 to 31 August 2015

In total I reviewed 40 cases and dealt with 9 enquires and 2 Freedom of Information (FOI) Requests. (Although the Judicial Complaints Reviewer is not covered by FOI I honoured my predecessor's decision to respond positively to such requests).

The 40 cases were made up as follows:

- 14 outstanding at the 1 September 2014
- 26 requests for review in year.

I received 29 requests for review in year and carried over 3 to 2015/2016.

Annex A



The Convener
Petitions Committee
Scottish Parliament
Edinburgh
EH99 1SP

12 January 2015

Dear Convenor

Petition No PE1458: Register of Interests for members of Scotland's Judiciary

Please accept my apologies to the Committee for not replying to your letter of 31 October 2014 in relation to this petition. I subsequently explained to Anne Peat that your letter had not reached me and she kindly forwarded it to me along with a request that I let you have my view on the substance of this petition.

I have seen the evidence provided to the Committee by my predecessor Moi Ali in May 2013, what was said by the Lord President in his written submission of 21 November 2014 and previously, the evidence provided by the Minister for Community Safety and Legal Affairs on 9 December 2014.

As a general principle I am in favour of those in public life, whether paid or unpaid, being required to maintain a register of interests including hospitality given or received.

We live in an age in which transparency about interests and activities of those in the public eye is regarded as good practice. There is a perception that anything less is the result of attempts to hide things. In the case of Judges, it is clear that court users and the public more widely seek reassurances of fairness and impartiality. I think it is difficult for those outside the Judiciary to understand the notion that the Oath taken by Judges on appointment should be regarded as sufficient evidence of their commitment to uphold the principles of public life.

Of course a register as called for by this petition would require to be kept up to date and the burden of cost and responsibility would have to be borne by, most likely, the public purse. It seems to me however that the costs attached would be offset to a degree by an increase in confidence and, conceivably, a drop in complaints.

In respect of the Annual Report by the Judicial Complaints Reviewer (JCR) for the period 1 September 2013 to 31 August 2014, the Report is now on the JCR website. It was sent in draft to the Lord President prior to publication.

Finally, I have undertaken to publish my own register of interests on my website. Currently in addition to my appointment as JCR for which I am paid a daily fee of £213 over a restricted number of days annually, I am a non-executive director of Registry Trust Ltd a not-for-profit company based in London (fee of £8,200 paid for 10 days work a year), I am a Scottish Trustee of Stepchange Debt Charity (unpaid), a Scottish Ambassador for Tomorrow's People a charity that works with disadvantage young people to find employment (unpaid). For each body I am required to provide regular updates of my

interests. I am a member of the English Speaking Union Scotland and the Scottish Dachshund club. I make a monthly payments in support of Cancer Research, the RSPB and the SSPCA.

I hope this is helpful in the Committee's on going consideration of petition PE1458.

Yours sincerely

Gillian Thompson

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Annex B

Register of Interests

APPOINTMENTS HELD during the period (including remuneration as appropriate)

Name of Organisation	Position held	Period of Appointment/Remuneration
Registry Trust Ltd	Non Executive Director	Sept 2010 ongoing (annual fee £8,200)
Stepchange Debt Charity Scotland	Trustee	June 2012 ongoing (unpaid)
Tomorrows People	Scottish Ambassador	(unpaid)
Scottish Dachshund Club	Treasurer	June 2015 ongoing (unpaid)
Audit and Risk Management Committee, Scottish Natural Heritage	Non Executive (co-optee)	September 2015 (daily fee £282)

Membership

English Speaking Union

Scottish Dachshund Club

Charitable Donations

RSPB, Cancer Research, SSPCA

FINANCIAL INTERESTS

Other than as home owner, none

POLITICAL ACTIVITY

None

GIFTS AND HOSPITALITY

None

FRIENDSHIPS/RELATIONSHIPS

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