



2020/2021

Annual Report

1st September 2020 to 31st August 2021

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Annex A: Register of Interests

1. FOREWORD

I am pleased to publish the Annual Report, as the Judicial Complaints Reviewer (JCR) for Scotland, for my fourth year in office. On 12 August 2020, I was re-appointed for a second term of two years. During this fourth year, covering the period 1 September 2020 to 31 August 2021, I received fourteen (14) new cases for review.

Due to the Corona Virus pandemic, staff from both the Scottish Government Justice Directorate and the Judicial Office for Scotland, have continued to work from home. Consequently, my liaison with both organisations has been by telephone, email, or virtual meeting.

During the year, I have not encountered any issues of concern and, in relation to resourcing, I was able to manage the caseload and any ancillary matters within my hours of work and budget. I am satisfied with the level of support and resources, which I have received over the year, from the Justice Directorate.

On 20 January 2021, I met with the Cabinet Secretary for Justice, to discuss my role and some issues which arise in the review of judicial complaints.

2. THE CURRENT JUDICIAL COMPLAINTS REVIEWER

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

I operate independently of the Scottish Government and the Judiciary.

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

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

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

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

3. THE ROLE AND REMIT OF THE JUDICIAL COMPLAINTS REVIEWER

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

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

The role was extended in 2018 with the implementation of the Complaints About the Scottish Tribunals Rules 2018³, which allows the JCR to review the handling of investigations into complaints against ordinary and legal Tribunal Members (TM) of the Scottish Tribunals in the:

- First-tier Tribunal for Scotland, and
- Upper Tribunal for Scotland.

Complaints about judicial members of Tribunals are dealt with under the Complaints About the Judiciary (Scotland) Rules 2017.

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

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

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

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

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

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

² JOH are - judges, sheriff principals, sheriffs, summary sheriffs, part-time sheriffs, part-time summary sheriffs and justices of the peace.

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

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

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

4 RESOURCES

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

The following figures are based on my work year – 01.09.20 to 31.08.21 and not a financial year:

My daily fee is £217.00

- In 2017/18: I claimed for 44 days @ £9548.00
- In 2018/19: I claimed for 29 days @ £6293.00
- In 2019/20: I claimed for 26 days @ £5804.50
- In 2020/21: I claimed for 32.5 days @ £7052.50

My fees in 2020/21 were £1248.00 higher than in 2019/20. This was due to an increase of 8 cases over the previous year (from 6 in 2019/20 to 14 in 2020/21).

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

- In 2017/18: Costs were £1086.25, Expenses were £466.84 Total of: £1553.09
- In 2018/19: Costs were £1166.66, Expenses were £297.40 Total of: £1464.06
- In 2019/20: Costs were £3327.00, Expenses were £66.50 Total of: £3393.50
- In 2020/21: Costs were £2562.04, Expenses were £63.00 Total of: £2625.13

Due to costs, my office budget for 2020/21 had an overspend: £2625.13 - £2000.00 = £625.13
In 2020/21, the principal costs were:

- My website (hosting and support) at £2146.97
- My PO Box fee of £352.50.

5 OVERVIEW OF THE YEAR

Of the fourteen cases I received, I completed the reviews by 31 August 2021 - no cases have been carried over into year five (2021/2022). Thirteen cases were complaints against a JOH with one against a TM. In reviewing the handling of complaints by the JOS, based on the information available to me, I found no substantive breaches of the Rules. There were no issues which required me to make any written representations to the Lord President about procedures for handling the investigation of matters concerning the conduct of a JOH/TM.

Statistics:

During the year, 1 September 2020 to 31 August 2021, the JOS handled:

- 108 court judiciary complaints, where 98 cases were concluded in that period (10 complaints are continued over).⁴
- 11 Tribunal complaints, where all were concluded in that period.

The JOS publishes statistics about complaints.⁵

During the year, 1 September 2020 to 31 August 2021, the JCR received:

- 13 requests for review of Judicial complaints, by post/email.
- 1 request for review of a Scottish Tribunal complaint.

In this year there has been a rise of 8 cases in the number of requests for review by the JCR.

2020/21 – 14

2019/20 – 06

2018/19 – 07

2017/18 – 17

2016/17 – not published⁶

2015/16 – 37

2014/15 – 40

2013/14 – 29

2012/13 – 23

2011/12 – 20

It is difficult to identify specific reasons for this increase. The Covid-19 pandemic, in 2019/20, impacted on the Judicial Hearings timetable which may have reduced complaint numbers. Then, in 2020/21, an improving flow of Hearings may, in part, account for the rise in number. Whilst supposition, the joint rise in the complaint statistics for both JOS and JCR, between 2019/20 and 2020/21, suggest this is likely to be a factor.

In 2020/21, 73 complaints recorded by the JOS were dismissed under Rule 8(4)(b) of the Rules, whereas in 2019/20 the figure was 52. The JOS cannot deal with complaints about

⁴ An increase of 26 complaints over 2019/20

⁵ www.judiciary.scot/home/publications/judicial-complaints

⁶ The previous JCR has not published a report for that year of office

judicial/tribunal decisions made by a JOH/TM, or the way that cases have been handled. A judicial decision is defined in the interpretation section at Paragraph 21 of the Rules:

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

All fourteen of the cases I reviewed in 2020/21 involved judicial decisions. It is a recurring feature in judicial complaints where the majority of complaints arise from the complainant being unhappy with the outcome of the Court/Tribunal process i.e. they do not agree with the ‘judicial decision’ reached by the JOH/TM. That judicial decision, however, can only be challenged by appeal or, in some administrative matters, by judicial review.

Most complaints received by the JOS are from the public where cases involving family and property law are the most frequent.

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

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

To comply with the principles of the Data Protection Act 2018, the JCR Privacy Notice is published on the JCR website⁷.

6 OBSERVATIONS

- The legal system in Scotland, and throughout the United Kingdom, which is founded on ensuring the independence of a JOH/TM, to decide the case before them based on the evidence presented during the Court/Tribunal Hearing, without influence from government, private or any other partisan interest.
- Despite the public information available, the concept of independence of ‘judicial decisions’, made by a JOH or TM in determining the case before them, remains contentious. Most complainants do not understand that where the complaint has been dismissed under Rule 8(4)(b), being about a ‘judicial decision’, this has a wider meaning than just the case result⁸. There is a belief, among some complainants, that the JCR has the power to re-investigate the decision by the JOS, investigate the finding in the Hearing or even change the judgments of the judicial/tribunal hearing. The JCR has no such power - only the appeal process can consider a challenge to a judicial decision and make a judgment on that challenge.

⁷ www.judicialcomplaintsreviewer.org.uk/

⁸ “Judicial decision” includes: a judgment in a case; a decision in relation to the conduct of proceedings; a decision in relation to case management; a decision in relation to court programming.

- The Complaint Rules only allow a complaint and its review be made on the personal conduct of a JOH/TM⁹. The JCR cannot change the decision made by the JOH/TM, nor reinvestigate the complaint.
- Complainants sometimes describe the behaviour of the JOH/TM, when managing or conducting their case, as being inappropriate or biased towards the other party in the proceedings. The Complaint Guidance¹⁰ leaflet produced by the JOS does stress the importance of evidencing the allegation:
“It is important that you provide enough information for us to consider your complaint. For example, it is not enough to simply say that ‘The judge was rude to me’. You will need to explain what was said or done by the judge that you felt was rude; providing examples of the language used or behaviour shown”.
- Where little or no evidence of misconduct is provided with the initial complaint, the JOS will write to the complainant requesting evidence, allowing time for a response. If the complainant alleges the JOH/TM was biased, that is for an appeal process, it is not for the JOS or the JCR to determine.
- In England, the Judicial Appointments and Conduct Ombudsman (JACO)¹¹ in judicial conduct and discipline complaints, can investigate ‘maladministration’. If appropriate, he can make recommendations for redress in cases where maladministration led to the original decision being unreliable. It is a much larger organisation and also deals with complaints concerning the appointment of judicial office holders. The JCR role is not an Ombudsman and does not have power in relation to maladministration.
- Involving ‘virtual hearings’¹², where there has been criticism of the quality of communication and the equipment used. This issue has been raised more than once by complainants whose Hearings were being conducted by audio or video links; some were complainants who were on remand in prison. The Courts Service has ownership of the visual/audio equipment used in these Hearings and it is aware of these issues.

I have highlighted these observations to both the Scottish Government and the Judicial Office for Scotland.

7 CONCLUSIONS

In my last two Annual Reports, I said there should be a balance between the number and type of complaints received, the outcomes and the value to individuals and the public purse. In this last year, whilst no substantial issues have been identified with the way the current system is operating, I continue to recognise that the system for review of their complaint may

⁹ http://www.scotland-judiciary.org.uk/Upload/Documents/GuidanceforMembersofthePublic2017_3.pdf

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

¹¹ <https://www.gov.uk/government/organisations/judicial-appointments-and-conduct-ombudsman>

¹² Where Hearings are held using audio/video equipment to protect the participants during the Covid pandemic

frustrate some complainants. Further, there is a significant financial cost for a complainant to pursue an Appeal or Judicial Review of the judicial decision.

A Review Meeting of public/legal service representatives was held in July 2019,¹³:

“To determine if the role of the Judicial Complaints Reviewer (JCR) was relevant and fit for purpose”.

The meeting recognised the benefit of a totally independent system for considering complaints about the Judiciary.

The JCR role is like that of the JACO, in that both review complaints following a judicial/tribunal hearing, but neither organisation has the power to challenge/change judicial decisions. The JCR is not an Ombudsman so I do not deal with maladministration, but I can:

‘Make referrals to the Lord President where I find the Rules have been breached, so that he can consider what action may be required, for example he may re-open an investigation if appropriate’.

The JCR does not have the case load (2019/20 - 562 conduct related complaints)¹⁴ or staff complement, of the JACO, to justify it becoming an Ombudsman; nor do I consider that it would be proportionate to introduce such a role. The role of the JCR was intended by the Act¹⁵ to review the handling of conduct complaints by the JOS, in accordance with the ‘Rules’, to ensure the independence of Judicial Office Holders and Tribunal Members in applying the Law in Scotland.

8 RECOMMENDATIONS

I remain of the opinion that, currently, there is no substantive reason to justify a change to the role for the Judicial Complaints Reviewer.

Ian A Gordon

Ian A Gordon OBE QPM
Judicial Complaints Reviewer for Scotland
6 October 2021

¹³ www.judicialcomplaintsreviewer.org.uk - JCR Annual Report 2018/19 Section 6

¹⁴ <https://www.gov.uk/government/publications/judicial-appointments-and-conduct-ombudsman-annual-report-2019-to-2020>

¹⁵ Judiciary and Courts (Scotland) Act 2008

ANNEX A – Register of Interests

1. Appointments held during the Report period - 2020/21:

- Acting Local Government Commissioner for Standards (Northern Ireland)
From August 2016 to present - Remunerated

2. Financial interests:

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

3. Relationships:

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

4. Political activity

None