



2021/2022

Annual Report

1st September 2021 to 31st August 2022

© Judicial Complaints Reviewer (2022)

The text of this document may be reproduced free of charge in any format or medium provided that it is reproduced accurately and is not misleading in context. Please acknowledge the material as Judicial Complaints Reviewer copyright.

If you have any enquiries about this publication, please write to:
Judicial Complaints Reviewer, PO Box 124, 196 Rose Street, Edinburgh, EH2 4AT
Email james.mollison@gov.scot

This publication can be downloaded free of charge from:
<https://www.judicialcomplaintsreviewer.org.uk>

CONTENTS

- 1. Foreword from the outgoing Judicial Complaints Reviewer**
- 2. The Role and Remit of the Judicial Complaints Reviewer**
- 3. Resources**
- 4. Overview of the year**
- 5. Observations**
- 6. Conclusions**
- 7. Recommendation**

Annex A: Register of Interests

1. FOREWORD FROM THE OUTGOING JUDICIAL COMPLAINTS REVIEWER

My name is Ian Gordon and I am pleased to publish this, my Annual Report, as the Judicial Complaints Reviewer (JCR) for Scotland, for my fifth and final year in office. During this fifth year, covering the period 1 September 2021 to 31 August 2022, I received twelve (12) new cases for review.

I was appointed as the Judicial Complaints Reviewer by Scottish Ministers on 1 September 2017, 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.
- Currently, Acting Legal Commissioner for Standards in Northern Ireland.

I have also worked abroad in public organisations 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.

My tenure of post will expire on 31 August 2022.

2. 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 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.

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.

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 the Scottish 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.

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

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.

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.

3. 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 – 01.09.21 to 31.08.22 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
- In 2021/22: I claimed for 36.5 days @ £7920.50

4. OVERVIEW OF THE YEAR

Of the twelve cases received during the reporting period (1 September 2021 to 31 August), I completed the reviews of them all by 31 August 2022. Due to its receipt on 29 August 2022, one other case received has been carried over into 2022/2023, for my successor to undertake the review. It has not been included in the yearly statistics for this Annual Report.

The twelve cases were complaints against a judicial office holder (JOH), there were no cases involving complaints against a tribunal member (TM). In reviewing the handling of complaints by the Judicial Office for Scotland, 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 2021 to 31 August 2022, the Judicial Office for Scotland (JOS) handled:

- 98 court judiciary complaints, where 87 cases were concluded in that period with 11 complaints continued over.⁴
- Six tribunal complaints,⁵ all were concluded in that period.

⁴ A decrease of 10 complaints over 2020/21

⁵ A decrease of 5 complaints over 2020/21

The JOS publishes statistics about complaints.⁶

During the year, 1 September 2021 to 31 August 2022, the Judicial Complaints Reviewer (JCR) received:

- 12 requests for review of judicial complaints, by post/email.
- No request for review of a tribunal complaint.

In this year there has been a decrease of 2 cases in the number of requests for review by the JCR:

2021/22 – 12
2020/21 – 14
2019/20 – 06
2018/19 – 07
2017/18 – 17
2016/17 – not published⁷
2015/16 – 37
2014/15 – 40
2013/14 – 29
2012/13 – 23
2011/12 – 20

With such a small number it is difficult to identify any specific reason for the decrease.

In 2021/22, there were 87 complaints against judicial office holders carried out by the JOS, 59 of these were dismissed as being about judicial decisions, under Rule 8(4)(b) of the Rules, whereas in 2020/21 the figure was 73.

In 2021/22, six complaints against tribunal members were recorded by the JOS of which five were dismissed under Rule 8(4)(b) of the Rules, whereas in 2020/21 the figure was 10.

The Judicial Office for Scotland (JOS) cannot deal with complaints about judicial/tribunal decisions made by a judicial office holder, or the way that those 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”.

Of the twelve cases I reviewed in 2021/22, 11 involved judicial decisions and one was classed as a withdrawal of the complaint. 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 or tribunal process i.e., they do not agree with the ‘judicial decision’ reached by the

⁶ <https://www.judiciary.scot/home/publications/judicial-complaints>

⁷The previous JCR has not published a report for that year of office

judicial office holder. That judicial decision, however, can only be challenged by appeal or, in some administrative matters, by judicial review.

Most complaints received by the Judicial Office for Scotland 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 Judicial Complaints Reviewer (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 website⁸.

5. OBSERVATIONS

The legal system in Scotland, and throughout the United Kingdom, is founded on ensuring the independence of the judiciary to decide the case before them, based on the evidence presented during the court or tribunal hearing, without influence from government, private or any other partisan interest.

The concept of independence of ‘judicial decisions’, made by a judicial office holder 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 result⁹. It is difficult to counter the belief, among some complainants, that the Judicial Complaints Reviewer (JCR) has the power to re-investigate the decision by the judicial office holder in the hearing.

My role as JCR is wholly restricted to determining whether the Judicial Office for Scotland (JOS) has followed the relevant Rules when deciding on the complaint made. Equally, JOS cannot change the decisions made during a judicial/tribunal case by the judicial office holder nor can they challenge the finding in the case. The JCR and JOS have no such power to challenge - only the appeal process can consider a challenge to a judicial decision and make a judgment on that challenge.

The Complaint Rules only allow a complaint and its review to be made on the personal conduct of a JOH/TM¹⁰. The JCR cannot change the decision made by the JOH/TM, nor reinvestigate the complaint.

Complainants sometimes describe the behaviour of the judicial office holder when managing or conducting their case, as being inappropriate or biased towards the other party in the

⁸ www.judicialcomplaintsreviewer.org.uk/

⁹ “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.

¹⁰ http://www.scotland-judiciary.org.uk/Upload/Documents/GuidanceforMembersofthePublic2017_3.pdf

proceedings. The Complaint Guidance¹¹ leaflet produced by the Judicial Office for Scotland (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 judicial office holder was biased, that is for an appeal process, it is not for the JOS or the JCR to determine.

In one review, I had the opportunity to examine a case where the JOS had passed the complaint to a nominated judge to carry out an investigation in accordance with Rules 12, 13 and 14. The papers showed a detailed investigation involving interviews, by the nominated judge, of those persons concerned in the original court proceedings. This case highlighted the consideration of the needs of a vulnerable complainant to ensure their views were fully considered throughout the investigation.

In England, the Judicial Appointments and Conduct Ombudsman (JACO)¹² 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.

6. CONCLUSIONS

There should be a balance between the number and type of complaints received with the outcomes and the value to individuals and the public purse. In my five years as Judicial Complaints Reviewer (JCR), 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 frustrate some complainants. The application of a firm hand, by a JOH in controlling and managing the case before them, is often seen as a conduct issue on their part by a complainant. Further, as the only route to challenge a ‘judicial decision’ is by an appeal, there is likely to be 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 tasked: *“To determine if the role of the Judicial Complaints Reviewer (JCR) was relevant and fit for purpose”.*

¹¹ www.scotland-judiciary.org.uk/ Complaints About Court Judiciary

¹² <https://www.gov.uk/government/organisations/judicial-appointments-and-conduct-ombudsman>

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

That meeting recognised the benefit of a totally independent system for considering complaints about the Judiciary. A further Review is set for 2024 when my successor will address that matter.

The Judicial Complaint Reviewer (JCR) role is like that of the Judicial Appointments and Conduct Ombudsman (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’.

I have not found any instance where the JOS has not complied with the ‘Rules’.

The JCR does not have the case load: (2021/22 brought twelve conduct related complaints), 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 Act¹⁴ to review the handling of conduct complaints by the Judicial Office for Scotland, in accordance with the ‘Rules’, to ensure the independence of judicial office holders in applying the Law in Scotland.

7. 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
21 September 2022

¹⁴ Judiciary and Courts (Scotland) Act 2008

ANNEX A – Register of Interests

1. Appointments held during the Report period - 2021/22:

- 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