



2019/2020

Annual Report

1st September 2019 to 31st August 2020

© Judicial Complaints Reviewer (2020)

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 6651, Blairgowrie, PH10 9AS
Email ian.gordon@judicialcomplaintsreviewer.org.uk

This publication can be downloaded free of charge from:
www.judicialcomplaintsreviewer.org.uk

CONTENTS

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

Annex A: Register of Interests

1. FOREWORD

I am pleased to publish the Annual Report for my third year in office, as the Judicial Complaints Reviewer (JCR) for Scotland, for the period: 1 September 2019 to 31 August 2020. During that time, I received six new cases for review.

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

I also continue to meet with members of the Judicial Office for Scotland (JOS) on a regular basis throughout the year to discuss individual cases, relevant developments in complaints and any issues which may arise during reviews. The onset of the Corona Virus epidemic in March 2020, when members of the Justice Directorate and JOS as Department staff began to work from home, ended face to face meetings. I found, however, that telephone and email communications addressed any issues for discussion.

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

2. THE CURRENT JUDICIAL COMPLAINTS REVIEWER

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

My initial three year period of appointment was scheduled to end on 31 August 2020, however the Cabinet Secretary for Justice offered me re-appointment as Judicial Complaints Reviewer from 1 September 2020 until 31 August 2022, which I accepted.

I operate independently of the Scottish Government and the Judiciary.

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

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

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

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

3. THE ROLE AND REMIT OF THE JUDICIAL COMPLAINTS REVIEWER

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

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

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

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

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

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

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

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

² JOH are - judges, sheriffs principal, sheriffs, 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,

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 it will not be accepted for review, unless there is a very good reason for the delay.

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.

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

4 RESOURCES

I am authorised to work up to four days per month (48 days per year), but the work is demand led so I do not always work four days. I have no office or administrative staff; I have a PO Box for mail and I work from home. I am supplied with a Scottish Government lap top, a 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 – 01.09.19 to 31.08.20 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

My fees in 2019/20 were £488.50 lower than in 2018/19.

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

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

The increase in 2019/20 arose from the requirement to update my laptop and mobile telephone in line with the Scottish Government IT update programme.

My office budget for 2019/20 had an overspend of £1393.00 as a result.

5 OVERVIEW OF THE YEAR

In my third year, of the six cases I received, I completed the reviews by 31 August 2020, with no cases being carried over into year four (2020/2021). 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 JOH.

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

Statistics:

During the year, 1 September 2019 to 31 August 2020:

The JOS handled:

- 82 court judiciary complaints, where 68 cases were concluded in that period (14 complaints are continued over).
- 11 Tribunal complaints, where all were concluded in that period.

The JOS publishes statistics about complaints⁴

During the year, 1 September 2019 to 31 August 2020, the JCR received:

- 6 requests for review of Judicial complaints, by post/email.
- 0 requests for review of Scottish Tribunal complaints.

The number of requests for review by the JCR has continued to fall:

2019/20 – 06

2018/19 – 07

2017/18 – 17

2016/17 – not published⁵

2015/16 – 37

2014/15 – 40

2013/14 – 29

2012/13 – 23

2011/12 – 20

Due to the low numbers overall, it is difficult to identify any information on its relevance. On one hand it could be that complainants accept the decision of the JOS whilst, on the other hand, it could be that individuals do not request for the decision to be reviewed because they find the review process does not satisfy their wish to have the judicial outcome changed.

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

⁴ www.judiciary.scot/home/publications/judicial-complaints

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

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

The Covid-19 pandemic has impacted on the Judicial Hearings timetable which may have impacted on subsequent complaint numbers. I have, however, no specific evidence to substantiate that supposition.

There is substantial information about the complaints process available in courts and online.

The majority of complaints received by the JOS are from the public and 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 have been no Freedom of Information requests to the JCR.

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

6 OBSERVATIONS

The legal system in the United Kingdom is founded on ensuring the independence of a JOH to make a decision which is based on the evidence presented during the Court/Hearing process; without influence from government, private or any other partisan interest.

It continues to be a recurring feature in judicial complaints that the majority of complaints arise from the complainant being unhappy with the outcome of the court process i.e. they do not agree with the ‘judicial decision’ reached by the JOH. That judicial decision, however, can only be challenged by appeal or, in some administrative matters, by judicial review.

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

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

⁶ www.judicialcomplaintsreviewer.org.uk/ Data Protection

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

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

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

Complainants regularly describe the behaviour of the JOH, when managing/conducting their case, as being inappropriate or even biased towards the other party in the proceedings. The Complaint Guidance⁹ 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, it does write to the complainant requesting evidence, allowing time for a response.

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

7 CONCLUSIONS

The Review Meeting held in July 2019,¹⁰ concluded that the role of the Judicial Complaints Reviewer (JCR) was relevant and fit for purpose and recognised the benefit of a totally independent system for considering complaints about the Judiciary.

In my last Report, 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, no substantial issues have been identified with the way the current system is operating, so it still would not be proportionate to introduce an alternative system.

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

⁸ www.judiciary.scot/home/publications/judicial-complaints

⁹ www.scotland-judiciary.org.uk/ Complaints About Court Judiciary

¹⁰ www.judicialcomplaintsreviewer.org.uk - JCR Annual Report 2018/19 Section 6

¹¹ Judiciary and Courts (Scotland) Act 2008

8 RECOMMENDATIONS

I am still of the opinion that, at this time, there is no substantive reason to justify a change to the current Judicial Complaints Reviewer system.

Ian A Gordon
Judicial Complaints Reviewer for Scotland
28 October 2020

ANNEX A – Register of Interests

1. Appointments held during the Report period - 2019/20:

- Acting Local Government Commissioner for Standards (Northern Ireland)
From August 2016 to present - Remunerated @ daily rate of £312.00

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 Service employee.

4. Political activity

None