



**2022/2023**

# **Annual Report**

**1<sup>st</sup> September 2022 to 31<sup>st</sup> August 2023**

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## **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, as the Judicial Complaints Reviewer (JCR) for Scotland, for my first year in office. On 1 September 2022, I was appointed for a term of three years. During my first year, covering the period 1 September 2022 to 31 August 2023, I received twenty two (22) new cases for review.

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.

## 2. THE CURRENT JUDICIAL COMPLAINTS REVIEWER

My name is James Mollison and I have been in post since 1 September 2022. 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 the private sector: with over 20 years' experience in senior risk and quality assurance roles for large companies and then, latterly, as a Panel Member and Chair on the General Teaching Council for Scotland (GTCS) Accreditation and Fitness to Teach Panels.

I am experienced in assurance and audit processes, in addition to knowledge of complaints processes and procedures along with addressing breaches of codes of conduct by education professionals within my remit at the GTCS.

## 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 2017<sup>1</sup>, (the Rules). The role is twofold:

1. To review investigations into complaints against judicial office holders (JOH)<sup>2</sup> which are undertaken by the Judicial Office for Scotland (JOS) to check that they have been carried out in accordance with the Rules.

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<sup>1</sup> [www.scotland-judiciary.org.uk/](http://www.scotland-judiciary.org.uk/) Complaints About Court Judiciary

<sup>2</sup> JOH are - judges, 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 a judicial office holder. 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<sup>3</sup>, which allows the JCR to review the handling of investigations into complaints against about the conduct of 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.scotland-judiciary.org.uk](http://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 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, E-Mail 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 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 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

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<sup>3</sup> 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,

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 three days per month (36 days per year), but the work is demand led so I do not always work three days per month. I have no office or administrative staff; I have a box for mail and 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 – 01.09.22 to 31.08.23 and not a financial year:

My daily fee is £217.00

- In 2022/23: I claimed for 33 days @ £7161.00

## 5 OVERVIEW OF THE YEAR

Of the twenty two cases I received, I have completed reviews on fifteen cases and had seven cases withdrawn by 31 August 2023 – an additional two cases have been carried over into year two (2023/24) and have not been included in the yearly figures or statistics for this Annual Report. One of the completed review cases included in this report was carried forward from my predecessor and is recorded as such in the JCR 2021/22 report. Of the completed reviews, thirteen cases were complaints against JOH with two 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 JOH/TM.

### **Statistics:**

During the year, 1 September 2022 to 31 August 2023:

The JOS handled:

- 77 court judiciary complaints, with an additional 4 cases being carried over. This is a decrease of 12 complaints over 2021/22.
- 11 Tribunal complaints were raised with the JOS in that period with an additional 1 case being carried over. This is an increase of 5 complaints over 2021/22.

The JOS publishes statistics about complaints<sup>4</sup>

During the year, 1 September 2022 to 31 August 2023, the JCR received:

- 20 requests for review of Judicial complaints, by post/E-Mail.

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<sup>4</sup> [www.judiciary.scot/home/publications/judicial-complaints](http://www.judiciary.scot/home/publications/judicial-complaints)

- 2 request for review of a Scottish Tribunal complaints, by post/E-Mail.

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

2022/23 - 22

2021/22 - 12

2020/21 – 14

2019/20 – 06

2018/19 – 07

2017/18 – 17

2016/17 – not published<sup>5</sup>

2015/16 – 37

2014/15 – 40

2013/14 – 29

2012/13 – 23

2011/12 – 20

Due to a latent IT server issue there were eighteen E-Mails requesting action by the JCR which had not been passed to my predecessor in his five years of tenure. As part of my role I followed up on these E-Mails, as a result ten of the E-Mailers were unable to provide the information necessary to either request or allow me to conduct a review. Five of the review requesters responded to my follow up and then subsequently withdrew their request for a review. Three requests for review were actioned as cases by myself. Both these actioned cases and the withdrawn requests for review are included in the figures for the 2022/23 year.

I believe these additional eight requests for review as part of the above listed IT server issue constitute a specific reason for this increase in the number of cases this year.

In addition to the five cases listed above by E-Mail as withdrawn, there were another two received by post which were subsequently withdrawn.

In 2022/23, 53 complaints (69% of the total number of cases) recorded by the JOS were dismissed under Rule 8(4)(b) of the Rules, whereas in 2021/22 the figure was 62 (70% of the total number of cases). The JOS cannot deal with complaints about 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”.*

Thirteen of the fifteen cases of which I completed a review of in 2022/23 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,

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<sup>5</sup>The previous JCR has not published a report for that year of office

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 website<sup>6</sup>.

## 6 OBSERVATIONS

I had an initial meeting with the Lord President, held in November 2022. This was an informal discussion where we discussed the JCR role itself along with the JOS role in terms of interactions with the JOS and if I had any issues settling into the role.

I had an initial meeting with the Cabinet Secretary for Justice (the previous incumbent in this role), held in February 2023, we discussed matters including:

- The JCR role in general and interactions with the JOS.
- The Cabinet Secretary for Justice asked me for my thoughts on the Judiciary in general.
- The Cabinet Secretary for Justice asked me if I had any anecdotal evidence regarding trends within JCR reviews which contained an element trauma within the review. As part of this discussion he asked if I could take on an action to report back informally to the Cabinet Secretary for Justice within my second year if I had identified any evidence or trends within JCR reviews.

In relation to my informal action from the meeting with the Cabinet Secretary for Justice I have met with the Head of Programme for the National Trauma Training Programme - in which we discussed trauma informed justice and I received the training materials for the accompanying skills and framework.

I have met with members of the Scottish Government Justice Directorate including a six monthly catchup with the Deputy Director of Civil Law and Legal Systems Division – the division responsible for sponsoring my office - in which we discussed the role, complaint

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<sup>6</sup> [www.judicialcomplaintsreviewer.org.uk/](http://www.judicialcomplaintsreviewer.org.uk/)

handling and any issues I may have had. I am satisfied with the level of support and resources which I have received over the year from the Directorate.

I have met with members of the JOS on a semi-regular basis throughout the year to discuss individual cases, relevant developments in complaints both my role and that of the JOS and any issues that may arise during reviews. After liaising with the JOS during my first year of tenure, the JOS have asked for a reinstatement of the previous JCR process of sending them completed review case reports, I will adhere to this request going forward in the coming year. I am satisfied with the level of support received over the year from the JOS.

As the JCR, I will continue to liaise with the JOS and the Justice Directorate to assess standards and performance in the handling of judicial complaints.

## 7 CONCLUSIONS

As this is my first Annual Report since taking office, any conclusions I reach will only be based on the 2022/23 data along with any findings from my predecessors report of 2021/22. The role of the JCR was intended by the Act<sup>7</sup> to review the handling of conduct complaints by the JOS, in accordance with the 'Rules', to ensure the independence of the Judicial Office Holders and Tribunal Members in applying the Law in Scotland. On my initial year in office I found no substantial issues in the way the current system is operating.

I expect to have another meeting with the Cabinet Secretary for Justice next year as a follow up to my initial meeting earlier this year.

The JCR role itself has a five year review cycle in which I expect a review meeting of public/legal service representatives to be held next year.

The previous review meeting, held in July 2019<sup>8</sup>, was tasked:

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

Attendees included the following;

- Deputy Director - Civil Law and Legal Systems Division – Scottish Government
- Executive Director of the Judicial Office for Scotland
- Judicial Complaints Reviewer
- Scottish Public Services Ombudsman (SPSO)
- Head of Courts and Tribunals Unit -Scottish Government
- Policy Officer – Judicial Office for Scotland
- Finance and Sponsorship Manager - Scottish Government

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<sup>7</sup> Judiciary and Courts (Scotland) Act 2008

<sup>8</sup> [www.judicialcomplaintsreviewer.org.uk](http://www.judicialcomplaintsreviewer.org.uk) - JCR Annual Report 2018/19 Section 6



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

## 8 RECOMMENDATIONS

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

*James Mollison*

James Mollison  
Judicial Complaints Reviewer for Scotland  
16 August 2023

## ANNEX A – Register of Interests

### 1. Appointments held during the Report period - 2022/23:

- Panel Member and Chair for General Teaching Council for Scotland  
From April 2020 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 Service employee.

### 4. Political activity

None