



2015/2016 Review

1st September 2015 to 31st August 2016

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Forward

I am pleased to publish a review of my second year in office. Once again I have grappled with the paucity of time available to carry out the functions of the office. I also remained technically challenged in relation to IT issues including updating the website and uploading documents. I inherited an agreement with the Scottish Government that the annual report would be uploaded by its IT staff to the JCR website. That has not been done for my report for 2014/15.

I apologise to anyone who has tried to contact me by telephone about this report or other matters during 2017. A planned upgrade to the Blackberry provided by the Scottish Government has resulted in my being unable to take telephone calls. That situation is ongoing as I write.

During the year I received 37 requests for review and I reviewed 37 complaints about the handling by the Judicial Office for Scotland (JOS) under the Complaints about the Judiciary (Scotland) Rules. Included in the 37 reviewed were 3 review requests that had tipped over from 2014/15. Likewise, of the 37 received 3 have tipped over into 2016/17. An odd coincidence but a coincidence nonetheless.

Despite the fact that I managed the flow much more efficiently during the period I remain of the view that managing a demand led service within a restricted number of days inevitably means delay in responsiveness and inevitable concern and inconvenience for complainants. The constraints of the role in terms of time and lack of support meant that I missed the deadline for this report of December

2016 as set out in the Direction Letter dated 1 November 2016 issued to me on behalf of Scottish Ministers.

Nothing occurred during 2015/16 to alter my views expressed in my 2014/15 report. They are:

- 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 do 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. With another year under my belt I am more convinced than ever that complainants do not understand that the Judicial Complaints Reviewer is there to check that the JOS has followed the Rules and is not a part of the judicial process for those seeking a different outcome to their case.

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

Finally, in my report for 2016/17, which is the final year of my 3 year contract I plan to provide an analysis of all requests for review in terms of the substance of the complaint made to the Judicial Office for Scotland.

July 2017

Overview of the year

This is my second Review report.

My feeling is that whilst I improved on the time taken to review cases I still did not provide a level of service that complainants expected. The Judicial Complaints Reviewer (JCR) role is not intended to be a full-time role but I again found that I was trying to run it as such. Conscious of the concern of complainants that a quick response be given to their request for a review, as with 2014/15, for much of the year I looked at emails and checked for voice messages every couple of days so as to keep things moving. However, by the Spring of 2016 I concluded that, to gain an idea of what I could achieve in the role by working to contract, I would work 3 days each month.

Fortunately, the combination of a manageable number of review requests and my increased efficiency in carrying out the reviews meant that I carried over only 3 cases into 2016/17. That said in applying the effort I left no time to manage the website, think about improvements, look outward to review best practice elsewhere and carry out all the housekeeping issues that arise from running an 'office'. Given that the service provided by the JCR is demand led it is impossible to forecast what effort may be needed from one month to the next.

Overall, in reviewing the handling of complaints by JOS based on the information available to me, I found no substantive beaches of the Rules.

The current Judicial Complaints Reviewer

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 over 2 years now 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. If no evidence is provided to substantiate the allegation, JOS take the view that whatever behaviour is alleged is simply part of the judge's 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

The award of costs and damages

Whose attendance is required in a hearing

Who should be allowed to participate in a hearing

Allegations of criminal activity (criminal allegations 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 arrived by letter again this year. There was a slight increase in emails and requests through the website and by telephone.

I also got a few enquiries from people who needed to be redirected or were looking for information about the office etc. I dealt with enquiries immediately so as to move them along quickly particularly if not in my remit.

I continued to use the desk provided in the government office at Victoria Quay (VQ) in order to keep people's data in an appropriate environment. During the year I was moved twice. Once within the open plan space and then to a room share.

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. That assumption has, in the main, held good for 2015/16.

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.

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 of running the 'office' 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.

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 Scottish Government. I assume that they have been deducted from the £2,000 attributed to the administration costs of the post. Beyond these costs I claimed:

Postage and printer ink - £30.55

During the year I was paid for a total of 41 days. 27 days at the daily rate of £215 and 14 days at the daily rate of £217. The additional 5 days were agreed in advance with the Scottish Government.

The total cost to the public purse of my operation was £8,873.55p.

Outward facing activity

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

It was announced in December 2015 that Lord Carloway was to replace Lord Gill as the Lord President. I met with the Lord Carloway in June 2016 and we had a wide-ranging discussion about the role of the Judicial Complaints Reviewer and the issues as I saw them, including my view that a review was required. I was updated on the process of transferring responsibility for Employment Tribunals to the Lord President and that complaints about Tribunal judges would come within the scope of the JCR. It was not known how many complaints would result.

The Lord President published a revised set of Rules on 1 April 2016, the Complaints About the Judiciary (Scotland) Rules 2016.

As a member of the Association of Ombudsmen I was invited to various meetings and seminars. I did not attend any. I took the decision in December 2015 to cancel membership which cost £700 rather than continue to pay and be unable to take any benefit from doing so.

Statistics: 1 September 2015 to 31 August 2016

In total I reviewed 37 cases and dealt with a couple of general enquires and 0 Freedom of Information (FOI) Requests. (Although the Judicial Complaints Reviewer is not covered by FOI I honour my predecessor's decision to respond positively to such requests).

The 37 cases were made up as follows:

- 3 outstanding at 1 September 2015
- 34 of the 37 requests for review received in year.
- Leaving 3 to carry over to 2016/17

I received 37 requests for review in year and carried over 3 to 2016/2017

Annex A

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 to June 2016 (annual fee £8,200)
Stepchange Debt Charity	Trustee and Non-Executive Director	June 2012 ongoing (unpaid)
Scottish Dachshund Club	Treasurer	June 2015 ongoing (unpaid)
Audit and Risk Management Committee, Scottish Natural Heritage	Non-Executive Director (co-opted)	September 2015 to February 2016 (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