



2023/2024

Annual Report

1st September 2023 to 31st August 2024

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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 second year in office. On 1 September 2022, I was appointed for a term of three years. During my second year, covering the period 1 September 2023 to 31 August 2024, I received eighteen (18) 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,

- Panel Member and Chair on the General Teaching Council for Scotland (GTCS) Accreditation and Fitness to Teach Panels.
- Panel Member and Chair for Redress Scotland

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 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, 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 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

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 breached, so that he can consider what action may be required, for example he may re-open an investigation if appropriate.

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, Social Security Chamber, Local Taxation Chamber and the Upper Tribunal for Scotland

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 Judicial Complaints Reviewer website was brought into line with current website standards and relaunched with an updated look and feel in June 2024.

The Judicial Complaints Reviewer box for mail has had a change of address in August 2024.

The following figures are based on my work year – 01.09.23 to 31.08.24 and not a financial year:

My daily fee is £217.00

- In 2023/24: I claimed for 33 days @ £7161.00

5 OVERVIEW OF THE YEAR

Of the eighteen cases I received, I have completed reviews on twelve cases and six cases were closed without review by 31 August 2024. Two of the completed review cases included in this report were carried forward from year one. Of the completed reviews, nine cases were complaints against JOH with three against 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 the JOH/TM.

Statistics:

During the year, 1 September 2023 to 31 August 2024:

The JOS handled:

- 64 court judiciary complaints were raised with the JOS in that period with 11 current cases being carried over. This is a decrease of 13 complaints over 2022/23.
- 13 tribunal complaints were raised with the JOS in that period with 2 case being carried over. This is an increase of 2 complaints over 2022/23.

The JOS publishes statistics about complaints⁴.

During the year, 1 September 2023 to 31 August 2024, the JCR received:

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

- 15 requests for review of judicial complaints, by post/E-Mail/website.
- 3 request for review of tribunal complaints, by post/E-Mail/website.

Four of the above requests were closed without review following correspondence with the complainer. Two of the above requests for review did not respond to my E-Mail's requesting the additional information necessary to allow me to conduct a review and were subsequently closed.

The JCR report figures for both the current and previous years are as follows:

2023/24 - 18
2022/23 - 22
2021/22 - 12
2020/21 – 14
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

In this current year there has been a decrease of four cases in the number of requests for review by the JCR.

A latent IT server issue led to an additional number of requests for review in 2022/23. I believe that the decrease in the number of cases this year is to be expected after the resolution of that issue.

In 2023/24, 56 complaints (73% of the total number of cases) recorded by the JOS were dismissed under Rule 8(4)(b) of the Rules, whereas in 2022/23 the figure was 58 (66% of the total number of cases). The JOS cannot deal with complaints about judicial/tribunal decisions made by the 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”.

Ten of the twelve cases of which I completed a review in 2023/24 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

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

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 one request to the JCR on Freedom of Information (FOI). This request was actioned and completed within 14 days of receipt of the request under the Freedom of Information (Scotland) Act 2002⁷.

There has been one request to the JCR for a Subject Access Request (SAR). This request was actioned and completed within 7 days of receipt of the request under the Information Commissioner’s Office (ICO.) guidelines⁸.

To comply with the principles of the Data Protection Act 2018, the JCR Privacy Notice is published on the JCR website⁹.

6 OBSERVATIONS

I had a meeting with the Cabinet Secretary for Justice held in January 2024, we discussed matters including:

- An outline of the JCR role in general and interactions with the JOS.
- A discussion on priorities for the coming year and my thoughts on the role.
- Trauma informed training and any trends regarding trauma within JCR reviews.

In September 2023 I was invited by the Judicial Institute for Scotland to attend the Lord President’s address on judicial conduct, which was part of the sheriff induction course.

I have met with members of the Scottish Government Justice Directorate including a six monthly catchup with the Head of Access to Justice Unit - in which we discussed the role, complaint handing 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 the JOS Policy Manager on a regular basis throughout the year to discuss individual cases, conduct rules changes, relevant developments in complaints for both my

⁷ [Freedom of Information \(Scotland\) Act 2002 \(legislation.gov.uk\)](https://legislation.gov.uk)

⁸ [Information Commissioner's Office \(ICO\)](https://ico.org.uk)

⁹ www.judicialcomplaintsreviewer.org.uk/

role and that of the JOS and any issues that may arise during reviews. I continue with the JCR process of sending the JOS completed review case reports. 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

This is my second Annual Report since taking office, any conclusions I reach will be based on the 2023/24 data along with my findings from my report of 2022/23. The role of the JCR was intended by the Act¹¹ 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 second year in office I have not found any emerging trends around requests for review, nor have I found any substantial issues in the way the current system is operating.

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

The previous review meeting was held in July 2019,¹² , 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

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.

¹¹ Judiciary and Courts (Scotland) Act 2008

¹² www.judicialcomplaintsreviewer.org.uk - JCR Annual Report 2018/19 Section 6

James Mollison

James Mollison
Judicial Complaints Reviewer for Scotland
03 September 2024

ANNEX A – Register of Interests

1. Appointments held during the Report period - 2023/24:

- Panel Member and Chair for General Teaching Council for Scotland
From April 2020 to present - Remunerated
- Panel Member and Chair for Redress Scotland
From December 2023 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