

PE1458/R

Cabinet Secretary for Justice

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**The Scottish
Government**
Riaghaltas na h-Alba

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SCOTLAND

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Dear David

Thank you for your letter of 24 September 2013 in relation to the role of the Judicial Complaints Reviewer, her powers and resources available to her.

By way of background, Ms Moi Ali, the first Judicial Complaints Reviewer (JCR), was appointed under the Judiciary and Courts (Scotland) Act 2008 (the 2008 Act) by Scottish Ministers, with the consent of the Lord President, for a period of three years from 1 September 2011 until 31 August 2014. The 2008 Act makes provision for a scheme to be established to handle complaints about the conduct of the judiciary. The mechanism is set out, in rules made by the Lord President (Complaints about the Judiciary (Scotland) Rules 2011), which provide that complaints about the personal conduct of a judicial office holder should be sent to the Judicial Office. If, after investigation by a nominated judge, the complaint is upheld the Lord President may decide to take disciplinary action against the judge who has been the subject of the complaint.

The 2008 Act provides a right for either the complainer or the judicial office holder who has been the subject of a complaint to refer the matter to the JCR to review the handling of the case to ensure that the set procedures have been followed. The JCR has no power to consider either the merits of any complaint or the disposal of the complaint: the role is limited to considering whether the appropriate procedures have been followed.

During the lead up to and passage of the 2008 Act, consideration was given to options regarding the role and functions of an independent reviewer as part of the scheme for dealing with complaints. For instance, consideration was given as to whether or not the Scottish Public Sector Ombudsman ought to be involved but this was rejected on the basis that conferring this function on the Ombudsman would not sit well with the constitutional position of the judiciary. An independent ombudsman, as there is in England and Wales

(who also has functions in relation to the judicial appointments process), was also rejected. It was considered that given the relatively smaller number of likely complaints in Scotland the public expenditure involved in establishing and maintaining an independent ombudsman would be not justified. Parliament concluded that the powers in the 2008 Act were both appropriate and proportionate.

I consider that given the relatively short time the post of JCR has been in existence, and the modest number of reviews that have been handled in that time, it is premature to review the powers of the role. I am therefore not persuaded of the need for any change to the role or its functions at this moment in time.

As far as resources are concerned, the JCR was initially paid a daily rate for 3 days work per month. The terms and conditions of appointment provide that additional remuneration can be agreed if extra duties involve a greater commitment of time and, following representations from Ms Ali, we have recently increased payment to 4 days per month for the remainder of this calendar year. The JCR also receives funding for office and travel expenses, and for other larger expenses, including the cost of setting up her website. Premises within the Scottish Legal Complaints Commission's offices were secured for the JCR to allow her access to all workplace essentials and some administrative staff support. However, Ms Ali elected to work from home. Having reviewed the matter, I consider that the current remuneration package is sufficient to enable the JCR to adequately perform her role.

I hope that this is helpful.

KENNY MACASKILL