

John Pentland MSP
c/o Public Petitions Clerk
Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP



31 July 2015

Dear John,

Public Petition PE1458 on a Register of Interests for the Judiciary

Thank you for your letter of 25 June 2015.

You ask whether the Scottish Government might wish to consider reviewing the role of the Judicial Complaints Reviewer (JCR). I note that Gillian Thompson, OBE, the current JCR, said in her evidence to the Committee on 23 June 2015 that "it is probably about time to start thinking about the possibility of reviewing" the role of the JCR. She also referred to a discussion that I had with her earlier in the year when I asked for her views about the role and remit of the JCR to date.

The post of JCR was created by the Judiciary and Courts (Scotland) Act 2008 and has been in place for just under four years. The first JCR was appointed on 1 September 2011 and Gillian Thompson, OBE, was appointed as the second JCR on 1 September 2014 for a three year term. The Scottish Government has provided support to the new JCR, in relation to accommodation and IT and other office arrangements, and agreed with her proposal to increase the number of days worked for a period of three months over the summer to assist with clearing outstanding cases for review and to reduce the delay in the timescale for dealing with cases.

I agree, in principle, with the proposal for a review of the JCR role. However, I am not minded to commission a review at this stage given the relatively short period of operation of the office and the fact that the role is to be extended by the Tribunals (Scotland) Act 2014. In the circumstances I would propose to consider a review of the role once the office holder is exercising the new functions under the Tribunals (Scotland) Act 2014. The review could then look comprehensively at the role and remit of the JCR, including assessment of the workload, capacity matters etc across the full range of functions carried out by the JCR.

You also ask about legal advice sought in relation to this Petition. In line with the long standing position under successive Ministerial Codes including the most recent version (2015 edition), other than in exceptional circumstances, the Scottish Government does not comment on the source or content of its legal advice, including why legal advice was sought, nor does it provide specific dates about when legal advice was provided. I am sorry not to be more helpful in this regard but I am sure you can appreciate the good reasons for this guidance which we follow. Paragraph 2.30 of the Code requires Ministers and officials to ensure that their decisions are informed by appropriate analysis of the legal considerations, and that the legal implications of any course of action are considered at the earliest opportunity. Therefore the Committee can be assured that the Government draws on oral and written legal advice as appropriate from its lawyers, from Counsel and from Law Officers.

Kindest regards,

PAUL WHEELHOUSE