

Judicial Appointments & Conduct Ombudsman

**Annual Report 2009-10**



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Presented to Parliament pursuant to Schedule 13, section 15 (4)  
of the Constitutional Reform Act 2005

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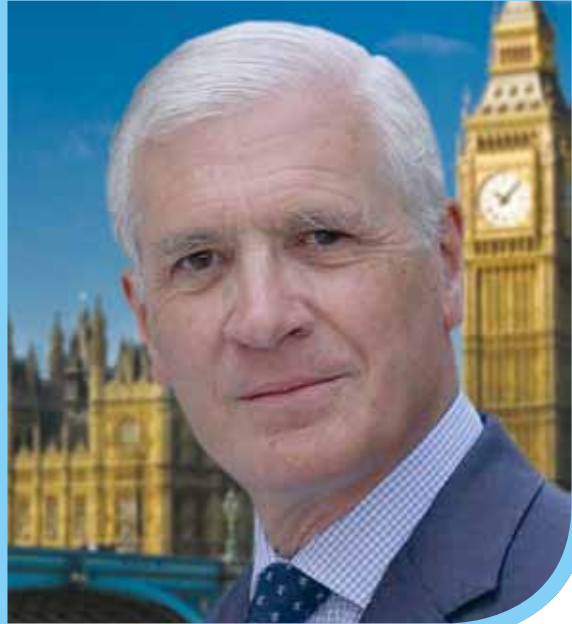
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# Contents

<b>Overview</b>	4
<b>The Ombudsman's Statutory Remit</b>	6
<b>Performance</b>	
Targets	8
Overall outcome	9
Data throughout my term as Ombudsman	10
Common themes in completed investigations	11
Conduct	11
Further commentary on themes	12
<b>Complainants and Stakeholders</b>	
Our communications	14
Working with stakeholders	15
Complaints against my office	15
Compliments	16
<b>Corporate Governance</b>	
Resources	17
Other statutory and departmental requirements	18
<b>Annexes</b>	
A 2009/2010 Statistics	20
B Case studies	22
C Summary of performance against Business Plan targets	37
D Forecast and Actual Expenditure	39
E Organisational structure	40



## Overview

**This is my fourth Annual Report as the Judicial Appointments and Conduct Ombudsman.**

I see my task as twofold; firstly I am here to ensure that maladministration is identified and, where practicable, rectified; secondly, I aim to be the catalyst for improving complaint handling by “first tier” organisations, with the long term aim of significantly reducing the number of cases that reach me. I owe an equal “duty of care” to both the complainants and those complained about.

In 2009/10 I received 379 complaints against 278 in 2008/09; (29 concerned the handling of applications for judicial appointment, 309 were complaints against judicial office holders, and 41 were “miscellaneous”). This is the highest annual total since my post was established in 2006, and an increase of 36% (101 cases), since 2008/09. I attribute the increase to both a greater awareness of my post, and to a marked increase in the number of people applying for judicial appointments.

To place these figures in context, the Judicial Appointments Commission (JAC), last year, handled applications from some 4113 candidates for selection exercises which launched in 2009/10.

The Office for Judicial Complaints (OJC) handled around 1571 complaints against judicial office holders. In addition, Tribunal Presidents and Magistrates' Advisory Committees also deal with conduct matters. Whilst at first sight the number of cases referred to me may seem high (309), a very large percentage relate to judicial decisions and/or judicial case management, which are outside the remit of both the first and second tier complaints organisations. Most come from members of the public who may have difficulty accepting, or understanding, that these are issues for appeal or other processes.

I consider that the first tier organisations have been working hard to improve their complaint handling over the last twelve months. That said, the common failings have remained largely unaltered, as set out in Chapter 3 and at Annex A of my Report.

Finally, I would like to thank my team for their excellent work in what has been a demanding year, with a significantly increased workload, ever more complex complaints and no additional resources. They go out of their way to help everyone who contacts them, regardless of whether their concerns relate to my office.

A handwritten signature in blue ink, appearing to read 'John Brigstocke', with a long horizontal line underneath it.

**Sir John Brigstocke KCB**



## The Ombudsman's Statutory Remit

I am independent of Government, the Ministry of Justice and the judiciary.

The Constitutional Reform Act 2005 empowers me to consider:

### **Judicial Appointments**

- complaints from candidates for judicial office who claim to have been adversely affected by maladministration in the way in which their applications were handled,<sup>1</sup> and/or their subsequent complaint to the JAC; and
- matters referred to me by the Lord Chancellor relating to the procedures of the JAC.

### **Judicial Conduct and Discipline**

- concerns raised by a complainant, or a judicial office holder who has been the subject of a complaint, about how a complaint was handled by the OJC, a Tribunal President or a Magistrates' Advisory Committee; and

<sup>1</sup> Section 102, Constitutional Reform Act 2005

- matters referred to me by the Lord Chancellor or the Lord Chief Justice relating to the handling of judicial conduct issues.

**In *judicial appointment complaints*, I can:**

- uphold or dismiss a complaint (in whole or in part); and
- make recommendations for redress (including a recommendation for payment of compensation for loss suffered as a result of maladministration).<sup>2</sup>

**In *judicial conduct and discipline complaints*, I can:**

- review how a complaint against a judicial office holder has been handled; and
- make recommendations for redress. In cases where I have concluded that maladministration led to the original decision being unreliable, I can set aside that decision and direct that a new investigation or review be undertaken (in whole or in part).<sup>3</sup> I can recommend payment of compensation for loss suffered as a result of maladministration.

<sup>2</sup> Section 102, Constitutional Reform Act 2005

<sup>3</sup> Section 111, Constitutional Reform Act 2005





## Performance

### Targets

My office has achieved all the targets set out in our 2009/10 Business Plan (see Annex C). We have continued, over the last year, to work at ways of speeding up our own internal processes, and have been operating our “3 track” system for the last year. We continue to review how this can be further refined.

**First level – “initial check”.** We continue to check all new complaints within 5 days of receipt to assess whether they fall within my remit. The increased volume of cases and enquiries (an increase of 36%; 379 compared to 278 in 2008/09) makes this a very challenging target for us; we remain committed to providing a high level of customer service. After careful consideration by an experienced caseworker, 41 cases were found to fall outside my remit; often they did not concern JACO business. A further 109 related to appointment and conduct issues, but where no complaint had been made to the first tier organisation or the complaint had not been properly particularised.

The complainants were all given a full written explanation detailing the reasons why I could not investigate their concerns and, where appropriate, were referred to an organisation which could assist them.

**Second level – “fast track”.** 229 complaints required a more detailed initial evaluation of validity to determine whether or not the complaint came within my remit. This was handled on a “Fast Track” approach where my staff considered the points made by each complainant most carefully, liaising closely with them to see whether they could be more specific in their concerns, and obtaining the complaint file from the first tier organisation. Based on these assessments, I deemed a full investigation to be unnecessary in a further 85 cases, compared to 72 last year. I wrote to the complainants accordingly, and in considerable detail.

**Third level – “full investigation”.** In 72 of the 379 cases received (19%), a full investigation was required. These cases were thoroughly investigated, involving liaison with the complainant and the first tier organisation, and the review of a high volume of documentation. Formal investigations can often take a long time in order to ensure a fair, thorough and balanced investigation; many of the issues are complex. I determined 70 cases this year. My staff keep complainants regularly informed of progress throughout. There have been some cases where the complainant has made a request for information; this can take time to consider, taking staff resource away from the investigation. On occasions the complainant has asked me to put my investigation on hold, because they have asked the Information Commissioner to consider matters involving the disclosure of information.

**Post complaint correspondence.** A growing area of work this year has been responding to correspondence received after I have finalised a complaint. Complainants often write to me with further information, or reasons as to why they do not accept, or agree with, my findings. In each case, my Investigation Officers thoroughly review the correspondence to see if there are any new matters of substance arising, and I personally respond in each case. There have been two occasions where I have altered my original decision in the light of post complaint correspondence.

## Overall outcome

The way I approach second tier complaint handling continues to achieve encouraging results. By notifying quickly those who we are not able to assist, we can often advise them of an alternative route for seeking redress. It also enables us to concentrate our resources on those cases that do fall within my remit, and which may indicate some failings of the process at the first tier. Whilst the number of complaints determined is lower than last year, more cases were finalised under our “fast track” process. Under our new system, cases dealt with at 1st and 2nd level accounted for around 80% of our work, the majority of which was completed within 6 weeks of receipt.

**Data throughout my term as Ombudsman**

Financial year	2006/07	2007/08	2008/09	2009/10
Cases received	304	314	278	379
Cases determined	37	101	103	70
Conduct (OJC, Tribunal, Advisory Committee)	4 upheld or partial 10 not upheld	10 upheld or partial 63 not upheld	44 upheld or partial 47 not upheld	21 upheld or partial 33 not upheld
Appointments (JAC)	5 upheld or partial upheld 18 not upheld	1 upheld or partial upheld 27 not upheld	1 upheld or partial 11 not upheld	0 upheld or partial 16 not upheld

This shows that:

- the number of cases received in 2009/10 has increased by 101 (36%) compared to 2008/09. This indicates that people are becoming increasingly aware of my service. Some complainants, however, appear to have a higher expectation of what I can do for them than my remit allows;
- a lower number of cases have required full investigation and determination;
- all cases that were transferred for full investigation had been correctly assessed as having issues that warranted detailed consideration;
- a higher number of cases (85 compared to 72 last year) were subject to a fast track detailed evaluation of validity to determine whether or not the case came within my statutory remit;
- our “3 track” system is working well in assessing which cases do fall within my remit, and enables us to concentrate our investigative resources in this area; and
- the vast majority of complaints continue to concern judicial conduct; 309 compared to 241 last year, an increase of 29% (69 cases). Not all of these fall within my remit, or need a full investigation.

## Common themes in completed investigations

### Appointments

#### The Judicial Appointments Commission

- with a significant increase in the number of candidates for judicial appointments, we have seen an increase in the number of appointment related complaints this year, which is not unexpected; an increase of 142% (29 cases compared to 12 last year);
- the majority of complaints stem from selection exercises where there are a high number of applicants for a small number of vacancies. There will always be those who are disappointed and surprised that they were not recommended for appointment, and some people still seem to have difficulty in accepting the competitive nature of the JAC's processes;
- whilst the JAC looks to explain as much as they can about the process in their guidance, there continue to be issues raised by complainants over the perceived fairness of Qualifying Tests as a means of sifting applicants; the JAC needs to have a way to sift candidates, and I have seen no evidence that this test is unfair or inappropriate;
- some candidates have high expectations of the written explanation (or feedback) that the JAC provides to unsuccessful candidates. I do not consider it proportionate for the JAC to respond in the level of detail requested by some, and I do not find it unreasonable that the JAC has reduced the level of detail in the explanations it provides to unsuccessful candidates; and
- an increasing number of complainants expect, unreasonably in my view, to be told of their precise scores, or to be given sight of their marked papers, as part of their feedback. It is not JAC policy to disclose this information and, whilst I will have sight of this information as required for my investigations, it is not for me to disclose it to candidates.

### Conduct

#### The Office for Judicial Complaints

- failure to seek independent verification or to ensure, whenever possible, that those approached are demonstrably independent;
- failing to make enough enquiries or to give complainants an opportunity to provide them with further information;
- poor case management;
- failure to record key issues from telephone conversations;
- not keeping complainants informed of the progress of their complaint; and
- insufficient care with dismissal letters to ensure that the investigation process is clearly explained, and that letters are appropriate and unambiguous.

**Tribunal Presidents<sup>4</sup>**

- failing to make sufficient enquiries or to obtain independent verification;
- the inadequacy of correspondence when rejecting complaints, including the failure to explain clearly the role, remit and process for investigations by the investigating judicial office holder; and
- the inaccuracy of decision letters to complainants, particularly when some aspects have been rejected, and others upheld.

**Magistrates' Advisory Committees**

- failing to make adequate enquiries including obtaining independent verification;
- conduct panel not addressing all of the points made by the complainant;
- Advisory Committee Secretaries making decisions without reference to the Committee Chairman, in contravention of the rules;
- a lack of clarity about the individual roles and responsibilities of Secretaries and Chairmen;
- inadequacies in the Advisory Committee decision letters, which led complainants to believe that their complaints had not been fully considered;
- lack of updates sent to complainants after a conduct panel has considered the case and has sent its recommendations to the OJC, due to confusion as to whether this is an OJC or Advisory Committee function;
- confusion over what should be dealt with as a pastoral matter, and what as a disciplinary matter, and how the roles of those involved differ as a result; and
- instances of considerable delay in the management of complaint cases, particularly when cases are passed between neighbouring Advisory Committees when there is a conflict of interest.

**Further commentary on themes**

It is disappointing how similar these themes are to my findings last year. A common theme with all the conduct organisations has been a failure to always notify complainants of my second tier function. Additionally, independent verification is often omitted. It is usually necessary in cases where the views of parties to the complaint differ, and the outcome of the discussion might have a bearing on the outcome of the complaint, but this should also be proportionate to the case.

The number of complaints about Advisory Committee handling has increased from 15 to 23, and with a higher proportion “upheld”, compared to other first tier organisations. I note that the 2008 Rules for Magistrates complaints are more specific than the 2006 Rules and should provide better guidance for those handling complaints in the future.

<sup>4</sup> or a judicial office holder designated by the President under rule 4 (1) of ‘The Judicial Complaints Tribunals) (No.2) Rules 2008’.

My remit allows me to consider appropriate redress where I have concluded that maladministration led to the original decision being unreliable. In conduct related complaints, I can set aside a determination if I uphold a complaint and conclude that failures or maladministration in the original investigation rendered that determination unreliable. I would have used this power in 10 cases, however, following my investigation, the first tier conduct organisation agreed to reopen and reinvestigate the matters. I was pleased with this constructive approach.

These process shortcomings, which have been brought to light from my investigations, have been passed to the first tier organisations. I hope they will take note and improve their services accordingly. For examples, see Case Studies at Annex B.



## Complainants and Stakeholders

### **Our communications**

My office has continued to improve communications with our Customers.

In the course of this year we have:

- reviewed our website and updated the corporate information we publish;
- revised our Information Booklets and Complaint Forms to ensure they are accurate; following customer feedback, we have clarified the wording on the guidance given on the new appointment complaint form;
- made improvements to our web pages for “on line” completion of our Complaint Form; following feedback, we have also improved the way the complainants’ text is viewed on the on-line form; and
- continued to develop our internal IT system, to ensure it is a more effective management information system, enabling us to manage our cases more effectively.

## Working with stakeholders

We have maintained constructive relationships with all our stakeholders, including the Lord Chancellor and the Lord Chief Justice. During the course of the year I have met regularly with senior officials within the MoJ, the Head of the OJC and the Chairman of the JAC. We continue to be an Associate Member of the British and Irish Ombudsman's Association (BIOA).

My Head of Office and Senior Investigating Officer continue to meet with officials in the JAC, OJC and the Office of the Senior President of Tribunals.

Members of my office gave a presentation to a delegation of judges from Turkey on my role and remit; and, on another occasion, a presentation to a delegation of judges from Pakistan, Nigeria, the Maldives and Uganda. We welcome the opportunity to explain more about what we do, and to be involved in wider judicial exchange events.

## Complaints against my office

Six complaints were received this year about the administrative service provided by my office.

- A complainant contacted my office at the conclusion of his investigation to say that some of the data referred to in his complaint related to another individual. On looking into this it was clear that we had accidentally been given information from the JAC about another candidate in the same competition, with a similar name, which had been taken into consideration in my investigation. My office apologised for this, and I agreed to set aside my previous finding and reinvestigate the case. Detailed discussions were held with the JAC to avoid such a mistake happening in future, and both the JAC and my office have put changes in place to avoid any repetition.
- A complainant complained about the length of time my investigation had taken. Whilst every effort is made to expedite cases, the complexity around some of the points raised can mean that they take many months to complete. We kept the complainant informed of progress each month, and apologised for any additional stress caused.
- One complaint was that my officials discriminated against a complainant, victimised him and were institutionally racist. Another complaint was that my officials had been unhelpful towards a complainant. In both of these cases my Head of Office investigated these serious allegations, and, after careful consideration, did not uphold either complaint.

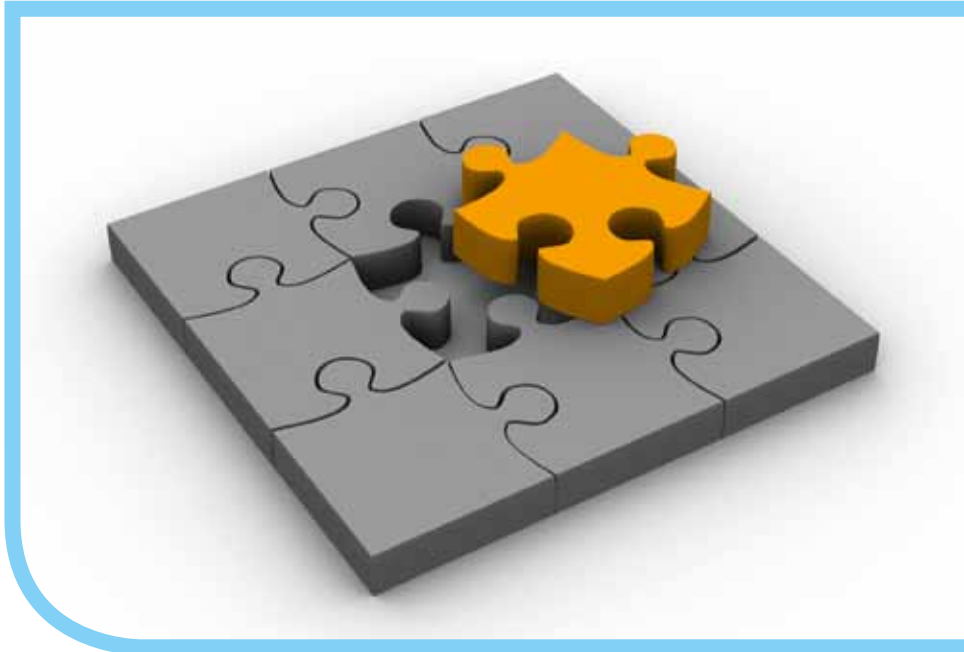


- There have been two occasions when complainants have complained that I am not independent of the Ministry of Justice; in each case my office has stressed the independent nature of my role and remit, and that the determinations I make are mine, and mine alone. We take steps to protect my independence, and, just as importantly, the perception of my independence, in our local working practices.

### **Compliments**

A number of complainants, including some whose complaints I did not uphold, have thanked us for our fair, thorough and balanced investigations.

- “I am writing to express my thanks to you (Investigating Officer) and to the Ombudsman for dealing with the review of the OJC’s investigation in such a thoroughly accurate and fair way.”
- “The investigation into my complaint has obviously been thorough and comprehensive, for which I thank you. I also accept your findings in their entirety.”
- “Irrespective of the outcome not to uphold my complaint, I would like to take this opportunity to thank you for looking into and investigating the complaint.”



## Corporate Governance

### **Financial resources**

We are committed to managing our resources effectively and have in place sound and appropriate financial and governance arrangements so that our key business targets and achievements are met.

The table at Annex D summarises our expenditure against budget. This year we again under spent against a budget that is still, four years on, lower than that allocated for the first year. We were very close to our year-end forecast once again; funds no longer required were surrendered to the MoJ in accordance with our Memorandum of Understanding.

### **Information assurance**

A key priority for us has been the protection of the information that we hold about complainants and those complained about. There has been an increased awareness of Information Assurance in the public arena, and my team are fully aware of, and responsible for, the safeguarding of the information we hold. In the course of the year, all staff have received additional training in this important area. In the appointment case that I agreed to set aside and reinvestigate, my office treated this as an information breach, and reported it to the MoJ.

### **Staff resources**

Our staffing level has not changed despite an increase in cases, (we continue to have an office of 10 staff, plus the Ombudsman). However, an internal re-organisation in the course of the year allowed us to put more resources into the Investigation Team, to ensure that the cases that are within my remit, and require a full investigation, are progressed as quickly as possible.

### **Training and development**

Tighter financial constraints have made us look at more innovative ways of training our staff to ensure our capability to develop and deliver our business. All of the Caseworkers and Investigation Officers in my office attended a bespoke modular training event, resulting in team members achieving an independently assessed accreditation: “Advanced Professional Award in Complaints Handling and Investigation.” Following the training event, a small working group was established within the team to ensure that we apply our learning to our investigations.

### **Sick absence**

The MoJ target for sick absence is 7.5 days per person. My office’s overall average is 3.6 days, which is significantly lower than the MoJ target. All sick absence is managed in accordance with the MoJ’s sickness absence policies.

### **Other statutory and departmental requirements**

In accordance with our Memorandum of Understanding with the Ministry of Justice, we have local procedures in place to ensure that we are fulfilling our commitment for compliance with Health and Safety legislation, staff security, IT security and Information Assurance policies, as well as our own local financial and risk management systems. In addition, we have procedures in place to ensure compliance with the Freedom of Information Act 2005 and the Data Protection Act 1998. It has become clear that FOI and DPA aspects have become an increasing area of work; the legislation is complex and, in a small office, the analysis of all documents to determine disclosure can be time consuming and, on occasions, has delayed the progress of the investigation it relates to. However, we remain committed to disclosing whatever we can, in line with legislation.

# Annexes

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**Annex A****2009/2010 Statistics****Breakdown of complaints received**

	Total number of cases received	Appointment-related cases received	Conduct-related cases received	Other enquiries received
April	39	5	30	4
May	30	2	25	3
June	31	3	26	2
July	46	5	34	7
August	25	1	17	7
September	25	1	20	4
October	28	3	23	2
November	23	2	20	1
December	29	1	27	1
January	21	1	19	1
February	36	2	30	4
March	46	3	38	5
	<b>Number of complaints</b>	<b>Appointment related cases</b>	<b>Conduct related cases</b>	<b>Other enquiries received</b>
<b>TOTALS</b>	<b>379</b>	<b>29</b>	<b>309</b>	<b>41</b>

**Breakdown of conduct complaint received, by first tier organisation**

Total Conduct related cases	Conduct cases relating to the OJC	Conduct cases relating to Tribunals	Conduct cases relating to Advisory Committees
309	209	77	23

**Breakdown of cases finalised<sup>5</sup>**

	Cases finalised at 1st level – ‘initial check’	Cases finalised at 2nd level – ‘fast track’	Cases finalised following a 3rd level ‘full investigation’ <sup>6</sup>
Appointment	6	0	16
Conduct – relating to OJC	105	54	30
Conduct – relating to Tribunals	29	26	14
Conduct – relating to Advisory Committees	8	5	10
<b>Total</b>	<b>148</b>	<b>85</b>	<b>70</b>

**Cases investigated, determined and finalised<sup>7</sup>**

	Not upheld	Upheld and partially upheld	Total
Appointment	16 (100%)	0 (0%)	16
Conduct – relating to OJC	18 (60%)	12 (40%)	30
Conduct – relating to Tribunals	11 (79%)	3 (21%)	14
Conduct – relating to Advisory Committees	4 (40%)	6 (60%)	10

5 The number of cases received will not correlate with the number of cases finalised because cases will have been received in the previous year and finalised this year, and similarly ongoing cases as at 31/3/09 have been carried into the next year, and will be finalised in the next year.

6 Of cases received in 2009/10, 72 required full CRA investigation.

7 The statistics have been broken down by each of the first tier organisations to provide a more valid and accurate summary. It is accepted that the OJC may have had varying degrees of involvement in conduct complaints in relation to Advisory Committees.

**Annex B**Case studies<sup>8</sup>**Appointment case studies****Case study one**

A Judge complained to me following rejection, at sift stage, of his application for appointment to a senior judicial post. I did not uphold his complaint.

His first concern was that he considered it unfair not to interview him, as he had been led to believe, in a written explanation following a previous application, that he stood a reasonable chance of appointment if he addressed the shortcomings identified. He also told me that he “could see no reason to think that those appointed displayed overall superior qualities to those which he had to offer” and that an irrelevant factor had influenced the decision. The Judge requested that my investigation should include an objective comparison of his application with evidence supplied by other candidates; I did not do so as it is not within my remit to form a view as to whether individual candidates should or should not have been appointed.

There will always be selection exercises in which the number of applicants exceeds the number of candidates who, realistically, can be offered an interview. It is thus entirely appropriate that the Judicial Appointments Commission (JAC) should run an initial selection process to narrow the list of suitable applicants; this is allowed for in legislation. In this instance it was clear that the sifters considered evidence from candidates’ self-assessment and referees. It assessed the extent to which the evidence demonstrated that candidates had satisfied the qualities and abilities, and awarded scores accordingly. I saw no evidence to suggest that the sifter’s assessment took account of any irrelevant factors.

There were 130 applicants in this selection exercise of whom only 45 were invited for interview. All candidates called for interview scored higher than the complainant. It was therefore not inappropriate for the JAC to reject his application solely on that basis.

<sup>8</sup> To ensure anonymity, ‘he’ has been used throughout the case studies, in lieu of he/she

*Case study one continued*

With regard to the written explanation from the previous competition, the JAC told me that the panel did not consider any material from earlier exercises for any candidates and that “all applications were considered afresh”. This is entirely consistent with the JAC’s policy that each competition is a separate entity with selections made on merit, through fair and open competition. I am content that, although the JAC clearly encouraged the Judge to apply again in the future, it did not give any guarantees that he would be interviewed if he were to do so.



**Case study two**

The complainant applied for appointment to a judicial office in a selection exercise. He had declared on his application form that, in the past, he had made some payments of Income Tax late and had incurred penalties for late VAT returns. The Judicial Appointments Commission (JAC) asked for further information and allowed the application to proceed. The complainant sat a qualifying test and subsequently attended a selection day, but was informed that he had not been recommended for appointment. The subsequent written explanation he received from the JAC stated that the Panel found that the complainant had not performed consistently across all elements of the process; the references were brief and out of date; and the complainant, at interview, did not provide detailed and suitable examples against the required qualities and abilities. It also stated that issues which the complainant had raised regarding compliance with tax legislation, and failure to demonstrate that steps had been taken to prevent a recurrence of this, raised concerns as to whether he had demonstrated "Efficiency" to the required level.

He subsequently complained to me that the JAC rejected his application only because he submitted a late VAT return, and that this contravened its stated policy on character issues; and the interview panel questioned him on his VAT returns but did not consider his letter of mitigation or any other evidence, so proceeded on an incorrect factual basis.

I found that the information concerning tax matters was considered on two occasions in the handling of this application. The first was when the JAC considered whether the matters raised a character issue that would prevent the application from proceeding. It was appropriate to have considered this as the Constitutional Reform Act 2005 requires the JAC to select only candidates who are of good character; issues regarding compliance with tax legislation might raise questions in this regard. The JAC's Selection and Character Committee agreed that this should not prevent the application from proceeding, but that the information raised concerns about the extent to which the complainant met the required qualities and abilities, which should be explored.

The issue was considered by the Panel which assessed the complainant at the Selection Day. It was clear that the information provided counted against the complainant, even though the application was not rejected solely on that basis. This was appropriate and consistent with the JAC's Good Character guidance, which states that "information supplied in answer to questions about character questions may well provide evidence relevant to the qualities and abilities being assessed." I also noted that the JAC's information pack indicated that candidates could draw on their range of

*Case study two continued*

work and personal experience to demonstrate their qualities and abilities. It cannot therefore be right that the JAC disregards negative evidence just because it does not directly relate to candidates' work. I was also content that:

- the Panel gave the complainant a full opportunity to discuss matters concerning his compliance with tax legislation, including steps that he might have put in place to prevent a recurrence of previous problems;
- it does not seem irrational for the Panel to have concluded that the issues which the complainant identified, combined with the observation that he had not provided any real indication of steps taken to prevent a recurrence, might raise concerns about whether he had demonstrated "Efficiency" to the required level; and
- the decision not to recommend the complainant for appointment was consistent with the panel's assessment that he had failed to demonstrate the required Qualities and Abilities to the appropriate level.

I did not, therefore, uphold this complaint.

**Conduct case studies****Case study three**

A complainant applied to me to review the investigation by the Office for Judicial Complaints (OJC) into his complaint that a judge had made critical and untrue 'obiter dicta' comments about him. These were comments which the Judge made and recorded in his judgement criticising the complainant's role in the case, but which did not form part of his reasoning on its merits.

The OJC dismissed the matter under Regulation 14(1)(b) of the Judicial Discipline (Prescribed Procedures) Regulations 2006 (as amended). The complainant argued to me that the OJC had acted wrongly as the obiter dicta comments were untrue, and were not part of the Judge's decision.

Regulation 14(1)(b) advises that a complaint must be dismissed if it is about a judicial decision and raises no question of misconduct. I was content that the OJC was entitled to consider that issues which the complainant had raised did relate to (i.e. was about) a judicial decision and therefore satisfied the first aspect of Regulation 14(1)(b). I was also content that the complainant had only stated that the obiter dicta comments were untrue and that he had not particularised, or even raised, any misconduct issues which he had perceived in the judge's manner. In the OJC's leaflet OJC1, examples of potential personal misconduct would be the use of insulting, racist or sexist language. I was therefore content that the OJC's decision was consistent with legislation and guidance and did not uphold the complaint.

### Case study four

The complainant applied to me to review the Office for Judicial Complaints' (OJC) investigation of his complaint against a Judge who had sentenced him to a term of imprisonment. He had previously complained about the sentence passed; the blatant atmosphere of racism and prejudice against him in court (including that the Judge was of an age which meant that he was likely to harbour racist views); and that the Judge had inappropriately approached the media to publicise his concerns that the complainant had been transferred to an open prison within four weeks of being sentenced, and had put the complainant's name and address in the paper.

The OJC told me that it dismissed concerns about events in Court on the basis either that they related to a judicial decision or judicial case management and did not raise a question of misconduct, or were not fully particularised. It also found that the complaint about the Judge discussing the case with the local media was "without substance or, even if substantiated, would not require disciplinary action to be taken". In reaching this view the OJC commented that the Judge's comments were made in open court, which the media were entitled to report, and that the Judge could not be held responsible for the way in which the media reported the case. The complaint to me was that the OJC did not properly consider the original complaint or take account of the evidence provided, and was possibly prejudiced as the complainant was a serving prisoner.

I am content that the OJC's dismissal of the majority of the complaint was in accordance with legislation and guidance; judicial decisions cannot be reviewed by the OJC as, to do so, would infringe the principle of judicial independence. I saw no evidence to support the allegation that the OJC might have discriminated against the complainant because he was in prison and I was content that the OJC did not do so.

However, I considered that the OJC did not properly investigate the allegation that the Judge had discussed the fact that the complainant had been sent to an open prison in the media. The OJC subsequently accepted that a Judge who approached the media directly might be subject to disciplinary action. There were a number of ways in which the newspaper might have obtained the story and I noted that judicial guidance states that "Courts operate in public, and any comment made by a judge in public session is regarded as open to reporting. This extends to comments made where there is no reporter in court, as long as someone has repeated it to them". However, the complainant had previously told the OJC that the media

*Case study four continued*

were not present at the hearing and the OJC should not have just assumed that the Judge did not directly approach the media. It should have made enquiries to establish the role, if any, that the Judge had played with a view to ascertaining whether it might warrant a disciplinary sanction. Failure to do so amounted to maladministration and I therefore partially upheld the complaint. This made the OJC's decision unsafe. I would have set aside the OJC's decision but the OJC offered to re-investigate this matter. I welcomed this constructive approach.

### **Case study five**

This case followed an Employment Tribunal (ET) hearing. On the final day, Counsel for the Respondents asked that the Tribunal recuse itself on the grounds that the manner and length of a Lay Member's questioning had shown bias against them. The Tribunal agreed to the request; the Respondents asked how to recoup costs and subsequently lodged a complaint about the hearing.

The complaint was considered by a Regional Employment Judge. He upheld concerns that the Lay Member's questioning of witnesses was very much longer than would normally be expected and gave the impression that the Lay Member had cast himself as "co-Counsel for the claimant". He also criticised the Employment Judge who chaired the Tribunal for not realising that an "ill-defined dividing line between permissible and impermissible questioning had been crossed". However the Regional Employment Judge did not uphold an allegation of judicial misconduct. The subsequent complaint to me included allegations that the Regional Employment Judge should not have considered the complaint as there was a conflict of interest in his considering complaints against Tribunal members in the same region; he had prejudged the outcome of the complaint; and he had not conducted an even-handed investigation.

I could not review the handling of the complaint against the Lay Member as, at the time of the original complaint, Lay Members of ETs were not classed as judicial office holders for the purposes of the regulated disciplinary function (this has since changed). I did, however, review the process by which the Regional Employment Judge considered complaints about the Employment Judge.

I was content that it was entirely appropriate for the Regional Employment Judge to have considered this complaint, as Legislation provides for Regional Employment Judges to consider complaints against Employment Judges sitting in their own region; it is indeed common practice for this to happen. I saw no evidence of a conflict of interest that might suggest that other arrangements should have been made. I was also content that the Regional Employment Judge followed an appropriate process in considering the Employment Judge's actions. He identified, as an issue that might raise a question of misconduct, the possibility that the Employment Judge had permitted inappropriate questioning. He considered this in the light of evidence concerning the Employment Judge's actions and also his findings from an investigation, conducted on the principles set out in the Judicial Complaints (Tribunals) Rules 2008 and associated guidance, into the Lay Member's actions.

*Case study five continued*

The complainant expressed concern that the Regional Employment Judge did not treat his initial correspondence as a complaint. It would clearly have been open to the Regional Employment Judge to have treated the initial correspondence in that way. However, the correspondence was aimed at securing an ex-gratia payment for costs as a result of the aborted hearing (which cannot be made under the complaints rules) and it was not unreasonable to treat the correspondence in this context rather than as a complaint. The Regional Tribunal Judge also sought comments from all three Tribunal members. It was not unreasonable for the Regional Employment Judge to give the Tribunal members the opportunity to comment on new evidence from witnesses.

I could not review the merits of the Regional Employment Judge's decision. However I was content that he followed an appropriate process in his investigation and did not prejudge the outcome. I did not, therefore, uphold the complaint.

### Case study six

A complainant asked me to review an investigation by a Deputy Regional Judge (the Judge) of his complaint against a Chairman of the Social Security and Child Support Appeals Tribunal. This followed a Tribunal hearing which considered the complainant's appeal concerning his entitlement to Disability Living Allowance. The original complaint included allegations that the Tribunal Chairman had unquestionably accepted inconsistent evidence from the Department for Work and Pensions; told the complainant that he should take more painkillers; bullied and intimidated the complainant's representative; laughed at a picture of the complainant when saying that he thought he was dancing; belittled the complainant by calling him a "tea boy"; and was rude to his wife.

The Judge rejected the complaint under rule 7(1)(b) of the Judicial Complaints (Tribunals) Rules 2006, on the basis that it was about a judicial decision and judicial case management and did not raise a question of misconduct. Before doing so the Judge sought the views of the Tribunal Chairman. He subsequently told us that he had taken account of the fact that the Complainant's representative had not lodged a complaint and that the appeal against the Tribunal's decision made no reference to inappropriate behaviour. Nor had the other members of the Tribunal expressed concern about the Chairman's conduct.

The complaint to me was that the Judge had accepted the Tribunal Chairman's response without question, and had ignored or failed to address a number of concerns about the Tribunal's comments and attitude. I accepted that the Judge's decision to reject the complaint about the evidence that the Tribunal had accepted (under rule 7(1)(b)), was consistent with legislation and guidance. However, the complaint against the Tribunal had raised other concerns which did not appear to relate to a judicial decision or judicial case management. I found that the Judge failed to undertake a satisfactory investigation into why:

- the Tribunal Chairman's response to the complaint did not address the specific allegations made against him, and why the Judge did not pursue the matter. I also noted that the Judge subsequently endorsed the Tribunal Chairman's comment that the complaint was expressed in general terms, but that at least one allegation was set out in some detail;
- the Judge also failed to make enquiries of those present in order to independently verify what had happened during the hearing; and



*Case study six continued*

- if no other evidence was available, the Judge did not consider why the complainant's representative had not lodged a complaint about the same matters and also the terms of any appeal. However it was inappropriate to have given any weight to these factors without previously attempting to verify what happened.

I found that the failure to illicit a full response from the Chairman to the issues raised, and the failure to independently verify what had happened before concluding that the allegations did not raise a question of misconduct, amounted to maladministration. I therefore partially upheld this complaint. I would have set aside the determination as I found that the maladministration in the original investigation rendered the original determination unreliable. I did not, however, need to use this power as the Judge agreed to reinvestigate the matter. I welcomed this constructive approach. I was also pleased that the Judge said that he would normally have sought to independently verify what happened and that not doing so in this case was an oversight.

### Case study seven

A Magistrate applied to me to review an Advisory Committee (AC) investigation into his complaints about two other Magistrates. He had complained that one magistrate had bullied him and that another, on a different occasion, had made a racist remark to him. The complaints concerned alleged incidents which had occurred some six to eight months before he reported them to the AC. He complained to me that there had been bias in the AC's investigation and that his complaints had not been taken seriously.

My investigation showed that the AC Chairman had looked into both complaints and had decided to deal with them separately. He dealt with the bullying complaint as a pastoral matter, having decided that it did not amount to misconduct. I could not review the merits of that decision but was content that the AC Chairman followed an appropriate process in reaching his conclusion. My remit does not allow me to comment on the handling of pastoral matters.

The AC Chairman dealt with the complaint about the racist remark as a disciplinary matter, under the Judicial Complaints (Magistrates) Rules 2008. The allegation was that a Magistrate had commented, following a confrontation in the Law Courts between the complainant and a third Magistrate, that "I wonder why Nelson Mandela was jailed for such a long time". The complainant felt that this had racist connotations. The Chairman sought comments from the person accused, who denied making the remark. He then decided that the alleged remark could not constitute misconduct, as it was not racist in the circumstances of the incident. He also felt that the complainant could not have been racially insulted by such a remark as it did not directly refer to him, and as he was not of South African origin.

I was concerned that the Chairman did not follow the correct procedure when he made this decision. He did not take account of the fact that the remark, if made, could most certainly have been construed as both racist, and as insulting to the complainant. He also took into account irrelevant evidence relating to the complainant's country of birth rather than his racial origin. I consider that the allegation raised serious race issues and therefore required a full investigation. I also believe that the Chairman should have had regard to the provisions of the Race Relations Act 1976 (Amendment) Regulations 2003, which state that, in considering an allegation of racial harassment, the particular perception of the person making the allegation must be taken into account. Further, after asking the accused for his

*Case study seven continued*

comments, the Chairman did not take them into account, or seek third party verification of the matter in accordance with Rule 19(2) of the Complaints (Magistrates) Rules 2008. This failure to follow the correct process amounted to maladministration and made the determination unreliable. I therefore partially upheld the complaint; I would have set aside the AC Chairman's determination, but did not do so as the AC had already agreed to reconsider the matter.

### **Conduct case study eight**

This complaint followed a case in which a panel of magistrates had convicted a member of the complainant's family but the verdict was subsequently overturned at appeal. The complainant wrote to the Office for Judicial Complaints (OJC) expressing concern about the decision reached and the Court Chairman's attitude, facial expressions, tone and nature of questioning. The OJC passed the matter to the relevant Advisory Committee (AC) and the complainant received a letter from the Justices' Clerk. This stated that the complaints process could not consider matters regarding a judicial decision and that the Justices' Clerk and Bench Chairman had discussed concerns about the Court Chairman's actions with him. The complainant also received a letter from the Advisory Committee Secretary suggesting that matters raised might be considered by the Justices' Clerk as a training matter. The complaint to me included questions as to the impartiality of the Justices' Clerk; why no witnesses had been contacted; and why the complainant had not been advised that he could complain to me.

I can understand why the complainant questioned the independence of a Bench Chairman, assisted by a Justices' Clerk, in dealing with complaints which raised disciplinary matters. However, it became clear during my investigation that the key decision under the regulated disciplinary function had been made by the AC Chairman when he decided, having received papers from the OJC, that the complainant's concerns should be dealt with on a pastoral rather than a disciplinary, basis. I could not review the merits of the AC Chairman's decision but I was content that he followed an appropriate process in reaching it and took account of the complainant's evidence. In particular it was unnecessary for him to make any further enquiries of other witnesses to independently verify a complaint once he had decided that the concerns, even if proved, would not warrant any disciplinary action.

It followed from the AC Chairman's decision that the actions of the Justices' Clerk and Bench Chairman were taken with a view to assessing whether there were any pastoral or training needs arising from the complaint. My remit does not enable me to review the actions of the Justices' Clerk or the Bench Chairman in such circumstances.

However, I did have some concerns arising from this investigation. Although the AC put considerable effort into providing a detailed response to the complainant's correspondence, it failed to inform him of the AC Chairman's decision that the complaint was to be dealt with as a pastoral, rather than a disciplinary matter. This was in breach of prescribed procedures, and it gave the complainant cause to question the independence of both the people

*Case study eight continued*

who considered the case and the process followed in doing so. I was also concerned that no written record was kept of the AC Chairman's decision. In addition, the AC accepted that it inadvertently failed to advise the complainant of my role, apologised for the oversight and said that measures had been put in place to prevent a recurrence. I was also pleased that the AC agreed to write to the complainant clarifying the roles of all parties during the process. I concluded that, overall, these failures amounted to maladministration in the round and therefore partially upheld the complaint.

I was pleased to note the AC's view that the difficulties experienced in handling the complaint should not recur. This was because the complaint was handled under the Complaints (Magistrates) Rules 2006 and associated guidance which included a discussion of the arrangements for dealing with pastoral and training matters. The AC has stated that the Complaints (Magistrates) Rules 2008, which have since come into force, are more precise than those which they replaced.

## Annex C

### Summary of performance against Business Plan targets

#### Our first business objective is to provide a timely, consistent and transparent service to all our users

Our Performance Targets are:

<b>PT 1</b> – to reply to all enquiries and requests for information, including when a potential complaint is out of the Ombudsman’s remit; we will provide a full reply and explanation within 5 working days, in 97% of cases	Achieved (100%)
<b>PT 2</b> – when an initial evaluation is required to establish if the potential complaint is within the Ombudsman’s remit, we will conclude this evaluation of validity, and provide a full reply within 30 working days in 80% of cases	Achieved (83%)
<b>PT 3</b> – when a case requires a full investigation by the Ombudsman, we will keep complainants fully informed on a monthly basis about the progress of our investigation, in 97% of cases	Achieved (99.7%)
<b>PT 4</b> – to acknowledge receipt of correspondence from complainants within 2 working days of receipt	Achieved when correspondence is not covered by PT1
<b>PT 5</b> – to deal with 90% of all correspondence received regarding complaints and administrative issues, within 15 working days of receipt	Achieved (95%)

#### Our second business objective is to continue to improve our processes and our service delivery, to ensure we deliver a professional and responsive service to all our users

Our Key Performance Indicators are:

<b>KPI 1</b> – to review our communications strategy, which includes our website, our leaflets and forms, to ensure they are up to date and reflect our organisation	Achieved, and updated as appropriate
<b>KPI 2</b> – to review our internal complaint handling processes and identify areas where we can deliver a timely and more responsive service	We have made improvements and continue to do so
<b>KPI 3</b> – to seek feedback from our customers about how we could improve our service	We have made improvements to our service as a result of customer feedback

**Our third business objective is to deliver our business in the most cost effective and efficient manner**

Our Performance Targets are:

<b>PT 6</b> – to operate within budget	Achieved
<b>PT 7</b> – to efficiently manage financial pressures, risks to achieving our business objectives and Information Assurance risks, by re-profiling expenditure plans, reviewing responses to risks, and reporting any significant consequences on a quarterly basis	Achieved
<b>PT 8</b> – to manage and monitor sickness rates to contribute to meeting the MOJs target to reduce absences to an average of 7.5 days per year per member of staff by March 2010	Achieved (3.6 days, per member of staff)

## Annex D

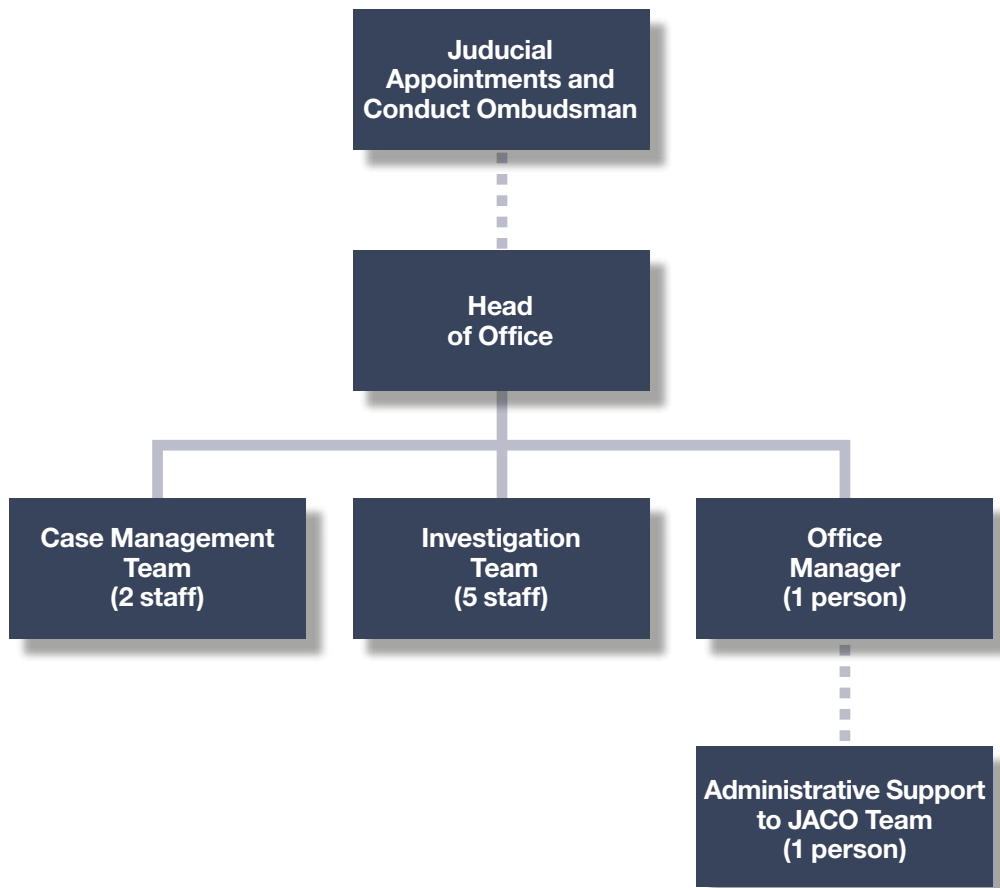
### Forecast and Actual Expenditure

	Forecast	Actual
Staff costs and salaries	564,740	548,267
Office expenditure, Accommodation and IT Services	21,940	22,244
Service costs and Miscellaneous	1,320	2,887
Training and Travel and subsistence	12,000	11,530
<b>Total expenditure</b>	<b>600,000</b>	<b>584,928</b>



**Annex E**

**Organisational structure**





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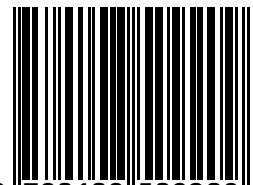
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