

Judicial Appointments &
Conduct Ombudsman
Annual Report 2013-14

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

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This publication is available at <https://www.gov.uk/government/publications>

Print ISBN 9781474104319

Web ISBN 9781474104326

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

ID 13051477 39986 06/14

Printed on paper containing 75% recycled fibre content minimum

Contents

The Ombudsman's Statutory Remit	4
Overview	5
Performance	7
Targets	7
Emerging themes and issues arising from reviews	10
Complainants and Stakeholders	13
Our communications	13
Working with stakeholders	13
Corporate Governance	15
Resources	15
Other statutory and departmental requirements	15
Annexes	16
A 2013/14 Statistics	17
Breakdown of complaints received	17
Breakdown of complaints received by first tier organisation	17
Breakdown of cases finalised	18
Cases investigated, determined and finalised	18
B Case studies	19
C Summary of performance against Business Plan	29
D Forecast and actual expenditure	31
E Data since the Judicial Appointments and Conduct Ombudsman role was established	32

The Ombudsman's Statutory Remit

The Ombudsman is a Corporation Sole who acts independently of Government, the Ministry of Justice (MoJ) and the Judiciary¹. The Constitutional Reform Act 2005 empowers him 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 application for appointment, and/or subsequent complaint to the Judicial Appointments Commission (JAC), was handled.

Judicial Conduct and Discipline

- concerns raised by a complainant, or a judicial office holder who has been the subject of a complaint, about how the complaint was handled under the regulated disciplinary function, by the Judicial Conduct Investigations Office (JCIO)², a Tribunal President or a Magistrates' Advisory Committee.

In judicial appointment complaints the Ombudsman 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).

In judicial conduct and discipline complaints the Ombudsman can:

- review how a complaint against a judicial office holder was handled, to ascertain whether there was a failure to follow prescribed procedures or some other maladministration; and
- make recommendations for redress. In cases where maladministration led to the original decision being unreliable, he can set aside that decision and direct that a new investigation or review be undertaken (in whole or in part). He can also recommend payment of compensation for loss suffered as a result of maladministration.

1 The office of the Judicial Appointments and Conduct Ombudsman is an arms length body of the Ministry of Justice.

2 The Judicial Discipline (Prescribed Procedures) Regulations 2013 and associated rules came into force on 1 October 2013. One of the changes was to rename the Office for Judicial Complaints (OJC) as the JCIO. For ease of reference all complaints about the OJC's actions are referred to as JCIO cases.

Overview

This is my 8th Annual Report and comes at the end of a year of substantial change. Since inception, my Strategic aim has been to act as a catalyst for the improvement of first tier processes with a view to reducing the number of cases that reach me. I have begun to see real progress in this direction which, inter alia, is well illustrated by:

- the new disciplinary legislation enacted in October 2013 which, together with the establishment of the JCIO and other steps taken by the JCIO in the management of its investigations, has resulted in a new focus on customer service; and
- no “Upheld or Partially Upheld” Conduct cases relating to Tribunals.

I also welcome the JAC’s introduction of online qualifying tests:

- this use of new technology has, apart from a few teething problems, made its application processes more convenient and accessible. It will also allow better use of limited resources and, by removing a barrier, may assist in widening the pool of available applicants for judicial office. I will monitor complaints to ensure that any issues arising from this change are properly addressed.

My own Investigation and Administration teams have also maintained their excellent performance meeting or exceeding, for the 8th year in a row, all our business targets.

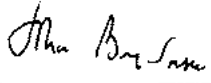
Despite considerable fluctuations in workload, they have made significant improvements in the time we take to deal with 2nd tier complaints. Complaints that come within my remit receive detailed initial evaluation. If there is a possibility that I might find maladministration they are referred for a full investigation. 99% of these preliminary investigations were conducted within 6 weeks. Full Investigations are now routinely started within two weeks of a complaint being accepted for investigation. This has resulted in cases being determined in a much shorter period of time.

JACO guidance leaflets and complaint forms have been revised and new arrangements made to print them more cost effectively, in line with budgetary constraints. The JACO website has been updated to clarify my powers and the process that I follow in investigating complaints. My office is currently working to transfer the JACO web pages to the gov.uk website which should assist in making information about the service I provide more visible to the public.

My office also carried out a review of our manpower resources. We proposed merging the Head of Office post (previously a Band A post) and Senior Investigating Officer role into a single Band B post. This has been implemented with a 14% saving on our budget for 2014/15.

6

Finally, I would like to thank my team for their hard work and dedication. I would also like to thank Karamjit Singh CBE for acting as Temporary Ombudsman in 2 cases where I stood aside having identified a potential conflict of interest.

A handwritten signature in cursive script, appearing to read "John Brigstocke", written in black ink. The signature is positioned above a horizontal line.

Sir John Brigstocke KCB

Performance

Targets

The JACO office has achieved all its targets in the 2013/14 Business Plan (see Annex C) and we remain committed to providing good customer service to everyone who makes contact. All correspondence and complaints are checked to assess whether they are within remit. 2013/14 saw another increase in the volume of cases and enquiries (828 compared with 810 in 2012/13). The majority of complaints concern judicial conduct (520 against 482 in 2012/13) which amounts to an 8% increase.

Initial checks

After careful consideration by a caseworker, 301 cases were found to fall outside the Ombudsman's remit as they did not concern matters relating to a judicial appointment or conduct. This figure represents a decrease of 5% on last year. Where appropriate, people were referred to another organisation which might be able to help or given information about who to approach for assistance.

JACO staff considered 526 cases during 2013/14, liaising with complainants where necessary to see if they could be more specific about their concerns. In 207 cases the complaint was not taken forward, usually as the complainant had not concluded their dealings with the relevant first tier organisation or the complaint to the Ombudsman had not been adequately particularised. These are the complaints shown as being dealt with under the 'initial check' stage in Annex A.

Preliminary investigations

Complaints that come within the JACO remit require a more detailed initial evaluation of validity and are fast-tracked under a thorough preliminary investigation process to enable the Ombudsman to consider whether they warrant a 'Formal Review'. This is an important but time consuming process which ensures that complaints are only given detailed consideration where there is a possibility of the Ombudsman finding maladministration, and that complainants are not given false hope by being made to await the outcome of a full review, where there is no likelihood of a finding of maladministration. In 2013/14, 231 cases were considered under this process.

Based on these assessments, a full review was deemed to be unnecessary in a further 163 cases compared to 144 in 2012/13. The Ombudsman wrote personally to all those concerned, and most accepted the explanation. A full review was required in 68 of the cases where issues came within remit (29%); this is slightly less than the 70 cases accepted for review in 2012/13. The proportion of

complaints where the Ombudsman found no prospect of maladministration rose from 67% to 71%, suggesting an improvement in the first-tier processes.

Full reviews

Full reviews are thorough and may involve liaison with the complainant and the first tier body; the Ombudsman refers his reports, in draft, to the Lord Chancellor and either the Lord Chief Justice (conduct matters) or the JAC Chairman (appointments matters) and takes account of comments received in finalising his views. This can make it a time consuming process as the issues are often complex and sensitive. JACO staff regularly update complainants on the progress of their cases.

Overall 63 full reviews were determined during 2013/14 (including 1 case determined by a Temporary Ombudsman). 5 of these were from Judicial Office Holders whose own conduct had been considered under the regulated disciplinary function. In addition there were 3 cases referred for a full review in which it subsequently appeared that it was not required.

25 of the complaints (40%) in which a full review was completed were upheld. This represents a 32% increase in upheld complaints from 2012/13. At first glance, a finding of maladministration in this proportion of cases might appear worrying. However, it is relevant to note that:

- the Ombudsman found maladministration in 2 JAC cases out of a total of 10. The JAC's selection processes are generally very good and the circumstances that resulted in two cases being partially upheld were isolated incidents and the Ombudsman did not find that the maladministration impacted on the selection decision. The JAC has taken steps to prevent a recurrence;
- the Ombudsman found maladministration in 19 complaints about JCIO reviews. This is an 11% increase on 2012/13 and represents 54% of completed reviews into JCIO matters. The largest area of concern was delay and poor case management, which was a factor in maladministration in 12 cases (this included 5 cases in which the Ombudsman concluded that a contributory factor was that the JCIO had undertaken nugatory and unnecessary enquiries). These generally concerned JCIO investigations that were ongoing before it implemented a number of steps to improve the management of its cases. The revised legislation introduced from 1 October 2013 has simplified many aspects of the complaints investigation procedure;
- the total number of Tribunal complaints decreased significantly from 19 to 11 (43%) and the Ombudsman did not find maladministration in any determined cases this year; and
- there were 4 cases emerging from Advisory Committee investigations in which the Ombudsman found maladministration (this included cases in which Conduct Investigation Panel reports were referred to the JCIO).

Overall, the number of complaints upheld by the Ombudsman reflects that incidents of maladministration remain low, given that applications for judicial appointments in 2013/14 exceeded 5500; 65 complaints were made to the JAC and 15% of those complainants subsequently complained to the Ombudsman. The JCIO determined 2018 complaints.

Redress

In 8 conduct cases a finding of maladministration rendered the initial decision reached by the first-tier body to be unsafe. In these cases the Ombudsman would have used his powers under section 111(5) of the Constitutional Reform Act 2005 to set the decision aside. He did not do so as the relevant first-tier investigating body agreed in every case to re-open the complaint; this was a welcome and positive approach.

In 7 conduct cases it was felt appropriate for the relevant first-tier investigation body to apologise. In most instances the relevant body had already agreed to do this.

In 1 case the Ombudsman recommended compensation of £150 to a Magistrate for distress caused by the JCIO incorrectly continuing to consider matters and stating that a press release would appear on its website concerning details of an investigation. However this was after an Advisory Committee had recommended that the Magistrate receive informal advice, which is not a disciplinary sanction.

Post review correspondence and challenges to JACO completed reviews

This year the Ombudsman responded to 23 letters and e-mails sent in response to his reports. There were no instances where the Ombudsman altered his findings or reopened a review. There has been 1 legal challenge where a complainant was given leave to apply for Judicial Review; this was subsequently refused. There have also been 3 instances in which the Ombudsman initially felt that a review was not necessary but reviewed his decision after receiving further representations.

Overall Outcome

The approach taken by the JACO office in second-tier complaint handling continues to achieve encouraging results, enabling vital resources to be concentrated on those cases that fall within the Ombudsman's remit, and which may indicate some failings or concerns about the process at the first-tier. Cases dealt with under the JACO preliminary investigation procedures accounted for around 70% of all cases that were identified as being within remit. 99% of these were dealt with within 6 weeks of receipt.

Emerging themes and issues arising from reviews

Appointments – the Judicial Appointments Commission

Issues arising in finalised reviews included:

- complaints about the JAC on-line Qualifying Test. These included issues arising from software problems that enabled candidates to take more than the suggested reading time prior to starting a test; the extent of the JAC's consideration before concluding that the test did not need to be re-run and difficulties with guidance issued to candidates taking the qualifying test;
- whether the JAC's response to complaints fully reflected the evidence that it considered;
- the operation of the JAC's Reasonable Adjustment Policy, including whether granting a request might have inadvertently disadvantaged the candidate in other ways;
- the standards used by the Selection and Character Committee in considering character issues;
- administrative problems affecting preparation for a role play exercise after a candidate arrived for a Selection Day; and
- information provided to candidates in its Information Packs and guidance.

The Ombudsman recommended that the JAC should:

- keep a more detailed note of Reasonable Adjustment requests from candidates, to enable it to provide a robust audit trail for each selection exercise;
- provide candidates with information on how to contact its staff should any problems arise after they have been left to prepare for any part of a Selection Day;
- clarify guidelines in its Good Character Guidance; and
- clarify information in its Information Pack about dates for submission of referee details.

Conduct – the JCIO

The Ombudsman considered the following issues in respect of JCIO investigations:

- delay and poor case management in conducting its complaints (including instances in which the JCIO's investigations were delayed by taking unnecessary steps to ascertain what happened during a hearing);
- instances where the JCIO missed issues raised by a complainant;

- whether the JCIO followed its own procedures in concluding that a complaint was not sufficiently particularised;
- whether the JCIO adequately explained its decision that allegations related to judicial decisions and judicial case management and did not raise a question of misconduct; and
- documenting of a case worker's consideration of issues arising in a court recording.

Complaints about delay and poor case management have predominated, especially in the first half of 2013/14; but they have become less of an issue as improvements to the JCIO's case management have taken effect. The revised legislation setting out the process to be followed has also led to a more streamlined system. Failure by the JCIO to identify all of the issues raised in a complaint is still an area of concern.

In 8 cases the JCIO agreed to reopen its investigations as the Ombudsman had identified maladministration that rendered the decision to dismiss the complaint unsafe. The Ombudsman welcomed this positive approach.

Tribunal Presidents³

The Ombudsman did not uphold any Tribunal complaints this year; however, he made 1 recommendation about the need to keep complainants updated, especially when the Tribunal President would not be able to proceed with an investigation because he was away from the office. Issues raised included:

- the handling of unsubstantiated claims of 'bias' where there had been no criticism of a Judge's decision such as an appeal or other judgement;
- the time taken to handle complaints, including delays arising when Tribunal Presidents are absent for any reason, and the need to keep complainants informed on the process of investigations;
- whether Tribunal Presidents took appropriate steps to verify the issues arising in the complaint;
- the adequacy and clarity of correspondence; and
- the need to notify complaints of their right to complain to the Ombudsman.

Magistrates' Advisory Committees

The Ombudsman considered the following issues in respect of Advisory Committee cases (including those which were subsequently referred to the JCIO):

- whether a Conduct Investigation Panel (CIP) should have obtained oral evidence from everyone present at a hearing;

³ or a judicial office holder acting on the President's behalf under rule 5 of 'The Judicial Conduct (Tribunals) Rules 2013'.

- whether an Advisory Committee followed a proper process when conducting disciplinary enquiries, including whether Advisory Committees had been sufficiently proactive in confirming details of complaints and had ensured that Magistrates had adequate opportunities to comment on complaints made against them;
- errors in communicating decisions, including whether a decision to dismiss a complaint had been made by the Advisory Committee Chairman, in accordance with the disciplinary rules;
- whether an Advisory Committee should pass a CIP report that recommended informal advice (not a disciplinary sanction) to the JCIO and how the JCIO should proceed with such matters;
- delay in the course of an investigation, including the need for Advisory Committees to ensure that investigations are taken forward when key personnel are absent for any length of time;
- the need to maintain contemporaneous notes of discussions relating to conduct matters, and the need to include information about any discussions which occur in the same meeting on issues that have no bearing on conduct matters; and
- a lack of updates, including cases where complaints were referred back to the JCIO.

The Ombudsman considered complaints from a number of complainants who had concerns about the handling of their complaints against Magistrates. He also considered complaints from 3 Magistrates who were concerned about the handling of complaints which had been made against them. He made recommendations to the JCIO about the handling of Magistrates' complaints which are referred to it for advice or final decision.

Complainants and Stakeholders

Our communications

Use of the website <http://www.justice.gov.uk/about/jaco> is encouraged as a means for finding out about the Ombudsman's role, and accessing the on-line complaint form.

JACO officials reviewed the communications material during 2013/14 and updated information contained on the JACO website, to clarify the circumstances in which the Ombudsman will commence a review. JACO officials also updated guidance in the information leaflets/forms. JACO officers work closely with colleagues in the MoJ Communications Directorate who maintain the website, to ensure that content was relevant and up-to-date.

Working with Stakeholders

Constructive relationships have been maintained and developed with all our stakeholders. During the course of the year meetings were held with the Lord Chancellor, the Lord Chief Justice, senior officials within the MoJ, the Head of the JCIO, the Chairman of the JAC and the Judicial Office.

Compliments received

Following the Ombudsman's first meeting with the Lord Chief Justice, The Right Honourable The Lord Thomas of Cwmgiedd, he wrote stating: *"I wanted to say, following our meeting, how impressed I was with the thoroughness with which each of the complaints had been investigated and the clarity of the reports"*.

The John Smith Trust wrote to thank the Ombudsman for allowing one of his officers to attend a conference and host a John Smith Fellow.

Governance & Management Services International wrote to thank the Ombudsman for supporting a meeting of a delegation of Nigerian Commissioners: *"Thank you very much for accommodating our visit last Tuesday and meeting with the Commissioners. Once again, they found the discussion very useful and insight into the work of your office extremely valuable."*

Below are some of the comments JACO received about cases finalised in 2013/14:

- *“Thank you for the Ombudsman’s final report, but first I would like to take this opportunity to thank you for what is clearly a lot of thought and work put into compiling the report. You have been fair and looked into the case quite thoroughly.”*
- *“I am just writing to confirm that I have received the Ombudsman’s report. I am of course disappointed at the outcome as I felt (and still do) that there were a number of very important issues that needed to be addressed and remedied. I would however like to take this opportunity to thank you for the courtesy shown to me for which I am grateful.”*
- *“Thank you for your letter and accompanying reports and documents. Please also convey my thanks to your Investigation Officer for the kindness, courtesy and professionalism shown to me throughout.”*

Corporate Governance

Resources

Financial Resources

JACO is committed to managing resources effectively and to have in place sound and appropriate financial and governance arrangements which enable key business targets and objectives to be met.

Staff Resources

The JACO Office staffing was reviewed in 2013/14. As part of this Review the role of Head of the Ombudsman's Office was, from March 2014, downgraded from Band A to Band B and there was a merger of the Head of Office post with the Senior Caseworker post. The Ombudsman's post is a 0.6 full-time equivalent. The office has a very low level of sick absence, an overall average of 4.6 days, which is well below the MoJ target of 7.5 days per person. All sick absence is managed in accordance with MoJ policies.

Training and Development

No new appointments have been made during 2013/14. All JACO staff have been fully trained to carry out their respective duties, and have a high level of complaints investigation experience between them. All JACO staff are qualified to Level 7 BTEC Advanced Professional Award in Complaints Handling and Investigations, and all JACO staff have completed additional training courses during the year, including training on the new government document classification system.

Information Assurance

A key priority continues to be the protection of information that JACO holds about complainants and those complained about; the team are fully aware of, and responsible for, the safeguarding of this information. All members of staff have completed the mandatory MoJ Fraud and Information Assurance awareness training.

Other Statutory and Departmental Requirements

In accordance with the Memorandum of Understanding between JACO and the Ministry of Justice, JACO has local procedures in place to ensure compliance with Health and Safety legislation, staff security, ICT security and Information Assurance, as well as its own local financial and risk management systems. In addition, JACO endeavours to respond appropriately to requests for information under the Freedom of Information Act 2000 and the Data Protection Act 1998. These requests can be time consuming and have, on occasion, delayed reviews, though JACO remains committed to disclosing information in line with legislation.

16

Annexes

Annex A

2013/14 Statistics

Breakdown of complaints received

	Total number of complaints & enquiries received	Appointment-related cases received	Conduct-related cases received	Other enquiries received
April	95	2	58	35
May	56	1	37	18
June	57	–	37	20
July	72	2	46	24
August	70	1	40	29
September	64	–	34	30
October	62	–	40	22
November	72	–	49	23
December	62	–	40	22
January	66	1	42	23
February	75	–	50	25
March	77	–	47	30
	Number of complaints & enquiries	Appointment related cases	Conduct related cases	Other enquiries received
TOTALS	828	7	520	301

Breakdown of conduct complaint received by first tier organisation

Total Conduct related cases	Conduct cases relating to the JCIO	Conduct cases relating to Tribunals	Conduct cases relating to Advisory Committees
520	418	83	19

Breakdown of cases finalised⁵

	Cases dealt with at 1st level – ‘initial check’	Cases finalised at 2nd level – ‘fast track’	Cases finalised following a 3rd level ‘full investigation’
Appointment	0	0	10
Conduct – relating to JCIO	176	89	39
Conduct – relating to Tribunals	83	65	11
Conduct – relating to Advisory Committees	10	9	3
Total	269	163	63

Cases investigated, determined and finalised⁶

	Not upheld	Upheld and partially upheld	Total
Appointment	8 (80%)	2 (20%)	10
Conduct – relating to JCIO	16 (46%)	19 (54%)	35
Conduct – relating to Tribunals	11 (100%)	0 (0%)	11
Conduct – relating to Advisory Committees	3 (43%)	4 (57%)	7

⁵ The number of cases received will not correlate with the number of cases finalised as some cases will have been received in the previous year and finalised this year, and similarly ongoing cases as at 31/3/14 have been carried into the next year, and will be finalised in the next year.

⁶ 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 JCIO may have had varying degrees of involvement in conduct complaints in relation to Advisory Committees.

Annex B

Case Studies

The purpose of the Case Studies is to provide a brief summary of the type of complaints that the Ombudsman receives, and to illustrate his approach in determining whether there was maladministration. These are extracts from finalised reviews, and highlight only the points of interest; they are not reflective of all matters complained about. To ensure anonymity, 'he' has been used throughout the case studies, in lieu of he/she.

Appointments:

Case study one – Judicial Appointments Commission (JAC)

This case concerned a complaint about a mistake in an on-line qualifying test, which the JAC was piloting in 2012.

A candidate for judicial office, whose application had been rejected after taking an online qualifying test, complained about a system error which meant that legislation (on which candidates would be questioned) was disclosed prior to the start of the test. He complained that this would give dishonest candidates up to two days to research the legislation, whereas honest candidates, like himself, would have only 15 minutes. He complained that the JAC could potentially recommend candidates for appointment who had “cheated”. The complainant asked the JAC to re-run the test.

The JAC responded that there was no reason to believe that any candidate had taken advantage of this error; and that all candidates were professionals who must satisfy good character requirements during a robust selection process.

I did not consider that the error in enabling candidates to access the information prior to the test amounted to maladministration. I was, however, concerned that the JAC response to the complainant was inadequate as among the 968 candidates who took the test, a small minority might have taken the opportunity to pre-read the legislation and gain an unfair advantage over others. I upheld the complaint on the grounds that the JAC’s response letter did not properly address the complaint. I recommended that the JAC apologise for this.

I took into account the following evidence in evaluating this aspect of the complaint:

- the JAC explained to me that, of necessity, it has to operate from a position of trust in running tests, more so when tests are run online with no oversight of the candidate;
- the complaint to the JAC was made 7 weeks after the test closed, limiting its scope to re-run the test;
- on investigation there was no evidence to prove that any candidate did or did not take advantage, and the company running the test could not provide any relevant information;
- it would be disproportionate, in terms of the resources and timetabling, to run a new test;
- the JAC followed a proper process in considering whether to re-run the test, with the final decision being made by the Chief Executive of the JAC;

- there could only be a small advantage gained by any candidate who read the legislation; and the complainant scored so poorly in the test that he would not have been personally disadvantaged by this;
- the JAC also informed me that, on checking the grading from the selection day, there was a clear relationship between test scores and the grades awarded at the selection day; and
- all candidates recommended to the Lord Chancellor were subject to statutory consultation and a character check.

I considered that, despite the JAC's poor response to the complainant, there was good reason to conclude that the qualifying test did not need to be re-run. I recommended that:

- the JAC ensures that a senior member of staff reviews all information provided to candidates in future online qualifying tests; and
- the JAC includes in future outsourced exercises the requirement for the IT company to provide suitable management information, including the ability to check a candidate's "logged in" history.

Case study two – Judicial Appointments Commission (JAC)

A candidate for judicial office, whose application had been rejected after taking an online Qualifying Test, complained to me that the JAC had told him that two papers were marked under his name, when he only submitted one, and thus he remained concerned that there was a flaw in the selection process.

The JAC advised my office that problems had arisen with the online Qualifying Test for this particular Selection Exercise. It received 1650 applications for an anticipated 145 vacancies. On the second day of the online testing there was a wide scale IT problem. Some candidates were unable to access the system and others were able to log in and complete the test but their entries were lost. Many of the candidates affected were subsequently able to take the test the following weekend. It was anticipated that over 700 candidates were affected in some way by the IT failings. Subsequently the JAC received an unprecedented number of complaints about this.

I did not uphold the first complaint. It was clear that the complainant experienced technical difficulties and complained to the JAC, but I was satisfied that the JAC managed the situation in a proactive manner as:

- it minimised the effect on candidates by providing regular updates via its website and by group emails;
- while it initially informed the complainant that he might have to take the online assessment again, it quickly reassured him that the test scores had been properly recorded and that he did not have to re-sit the test; and
- it considered the complainant's point about the amount of time taken to access the test. It examined whether the complainant should be invited to interview, but concluded that his score was too low.

I did not uphold the second complaint that there was a flaw in the selection process. The basis of this complaint was his concern that two sets of test papers had been attributed to him although he had only completed the online assessment once, and that the JAC informed him that it had looked at the scores in his first and second attempt of the online assessment. In fact, the JAC acknowledged that it made a mistake in its letter and that only one set of papers had been marked for this candidate. I therefore recommended that the JAC should apologise to the complainant for its error. Although an administrative error resulted in the complainant being provided with misleading information about his online assessment, I was not persuaded that any shortcomings in this regard affected him as a candidate for selection or were so serious as to merit a finding of maladministration as:

- the JAC has explained that the candidate's details were incorrectly entered onto the JAC database twice and that this was the reason he had been sent two assessment ID numbers. However, the problem was quickly dealt with by the Selection Exercise team and the candidate was advised of the correct link to use; and
- my investigating officer scrutinised the excel spreadsheets containing the candidates' scores and was satisfied that only one set of marks was attributed to him.

Conduct:**Case study three – Judicial Complaints Investigations Office (JCIO)**

This case concerned the handling of a complaint about a High Court Judge. The complainants raised a number of concerns and the JCIO's investigation was lengthy.

Two aspects of the complaint to me raised concerns that the JCIO had:

- failed to listen to the recording of the correct hearing; and
- sought comments from parties biased against them which left them open to ridicule and harassment.

The complainants were involved in a boundary dispute with a neighbour which had escalated to the Court of Appeal. Following the hearing they complained to the JCIO that one of the Judges had treated their barrister with disrespect and dismissed their evidence concerning the disputed land. The JCIO, having summarised their concerns into three points, dismissed two on the basis that they concerned judicial case management and decision making and raised no question of misconduct. It sought further particularisation on the remaining point which concerned the Judge's comments and attitude. Attempts to obtain the recording of the hearing were unsuccessful and the JCIO were informed that the recording didn't exist. The JCIO obtained comments from the Judge and sought verification of events from third parties at the hearing, which included the complainant's opponents. The JCIO ultimately dismissed the remaining aspect of the complaint on the basis that it was mistaken.

I did not find any evidence of maladministration in these two aspects of the complaint. The evidence reflects that the JCIO had taken reasonable steps to obtain the recording of the hearing and had taken appropriate alternative action to verify what had happened by obtaining comments from third parties, including the complainant's opponents. Although I had sympathy for the complainants, the JCIO had followed its own procedures.

However as a result of this complaint I made recommendations regarding case management, including that the JCIO should make it clear to complainants that, when contacting third parties for comments, it may be deemed appropriate to contact their opponents in litigation. I am pleased to report that the JCIO agreed to implement this recommendation.

Case study four – Judicial Complaints Investigation Office (JCIO)

This complaint raised concerns about whether the JCIO's decision to dismiss a complaint had been premature despite there being sufficient evidence to warrant a further investigation.

Following a hearing at a County Court the complainant raised a number of general concerns to the JCIO about the Judge's personal conduct. He claimed that the Judge had been aggressive, impatient, intolerant and bullying towards him which caused him to become flustered, confused, nervous and distressed. The JCIO dismissed a number of aspects of the complaint on the grounds that they concerned judicial decision making or case management. However, it asked the complainant for some additional information about his concern that the Judge had been rude, bullying and aggressive towards him. It asked the complainant to provide information about what the Judge had said and when; his tone of voice; a description of his body language; and the context of the comments made. The JCIO considered that the complainant's response failed to provide sufficient evidence to warrant any further investigations, such as listening to a recording of the hearing, and dismissed the complaint on that basis.

I considered whether the JCIO had dismissed the complaint prematurely but concluded that it had not done so. It was appropriate for the JCIO to have asked the complainant to specify exactly what the Judge had allegedly said and done. The JCIO has no set standard of what constitutes a particularised complaint beyond providing the date of the hearing, the Judge involved and how the Judge's conduct was believed to be at fault. Beyond that, each case is considered on its merits. In this instance the JCIO was of the opinion that the information provided was too general to warrant any further investigation and on that basis there was no requirement to listen to the recording of the hearing or seek corroboration from others present about what the Judge had said, his tone of voice and manner. There was no evidence that the JCIO had followed an inappropriate process in reaching its conclusions or that it was inconsistent with legislation and guidance and I did not uphold the complaint.

Case Study five – Tribunal President

This case concerned a complaint that a Regional Tribunal Judge (RTJ) had delayed matters, wrongly addressed correspondence and took no disciplinary action after substantiating part of the original complaint.

The complainant represented a friend at a Tribunal Hearing. After the hearing he complained that the Tribunal Judge had “raised his voice in an offensive manner, and would not let him speak”. He also raised concerns about the evidence that the Judge allowed.

The RTJ who investigated the complaint obtained comments from the Tribunal Members present at the hearing. He partially upheld the complaint as he concluded that the Judge had not allowed the complainant to properly represent the Appellant, and did not deal with matters in a sufficiently sensitive way. The RTJ dealt with the matter pastorally within the Tribunal, as he was entitled to do under the extant Rules at the time.

The complainant then complained to me that the RTJ had:

- delayed matters;
- wrongly addressed correspondence; and
- not taken disciplinary action after substantiating part of the original complaint.

On the first two points, the RTJ had deferred dealing with the complaint until after a reconvened appeal hearing, in accordance with the Rules. Unfortunately, almost two months elapsed from the point at which the RTJ was in a position to deal with the complaint. The Tribunal also failed to update the complainant during this period and, on one occasion, addressed a letter incorrectly. The RTJ explained to me that his judicial duties had prevented him from considering the case earlier, and that it would have been inappropriate to delegate the matter to another Investigating Judicial Office Holder. On balance, I determined that these matters did not amount to maladministration.

On the third issue, the RTJ was entitled to deal with the matter pastorally, which precluded disciplinary action.

Case Study six – Magistrates’ Advisory Committee (MAC)

This case stemmed from a complaint by a Legal Advisor who had overheard a Magistrate making inappropriate comments in a private conversation with a police officer.

The ensuing investigation was, sensibly, moved from the Magistrate’s home Advisory Committee to another Advisory Committee and, following a series of errors by that Committee, to a third which instigated a Conduct Investigation Panel. The JCIO then referred the matter to the Lord Chancellor and Lord Chief Justice who jointly reprimanded the Magistrate concerned.

The Magistrate complained to me that:

- a private conversation should not have been investigated;
- papers containing sensitive information were not properly redacted;
- he was given incorrect information about the date of the incident on two occasions; and
- there was unacceptable delay.

On the first issue, all Magistrates are bound by both the Judicial Oath and the “Magistrates Declaration and Undertaking” whereby they promise to maintain the standing and reputation of the Magistracy at all times, in both their public and private life. There is nothing in the prescribed procedures that precludes Advisory Committees from investigating issues arising from private conversations. I did not uphold this complaint.

On the other three issues, I identified significant process errors and delays which, in the round, did constitute maladministration. The appropriate Advisory Committees and the JCIO apologised to the Magistrate.

Case Study seven – Magistrates’ Advisory Committee (MAC)

The background to this case was a complaint from a Magistrate who alleged that another Magistrate had assaulted him as they were leaving Court. There were no witnesses and the complaint was strenuously denied. He also complained to the Police but the Crown Prosecution Service declined to prosecute.

The MAC appointed a Conduct Investigation Panel (CIP) to investigate. It upheld the complaint and recommended to the JCIO that the Magistrate complained about should be removed from the Magistracy. On receiving the report the JCIO decided to refer the report back to the MAC as it was concerned that the panel had not taken independent evidence to verify the facts. A second CIP also upheld the complaint.

Following further JCIO concerns, an Investigating Judge was appointed to look into the issues. He was not satisfied that an assault had taken place and recommended that no disciplinary action should be taken. The Lord Chancellor and Lord Chief Justice agreed and jointly dismissed the complaint.

The Magistrate then complained to me about:

- the time it had taken to investigate his complaint;
- a lack of monthly updates;
- the amount of time the subject of the complaint was given to submit his representations; and
- a conflict of interest in the Secretary to the Advisory Committee’s role as both Secretary, and later as a witness in the Investigation.

I did not uphold any of his complaints. On the first, whilst 21 months is a long time, it included a judicial investigation, and two earlier conduct panel hearings. The complaint had also been put on hold for 5 months whilst the police investigated.

On the second, the MAC should have provided monthly updates. This was an oversight by the MAC Secretary, but was not of sufficient seriousness to warrant a finding of maladministration, particularly as the complainant didn’t raise the issue at the time. The Secretary apologised for his mistake.

On the third, the Magistrate complained about provided his representations within the target set out in the Magistrates Rules.

On the fourth, I was content that the Secretary took all appropriate measures to ensure there was no conflict of interest and followed the Rules to the letter.

Annex C

Summary of Performance against Business Plan targets

Our strategic aim in undertaking independent reviews into complaints is to ensure that the processes for applying for Judicial Office and for dealing with complaints about Judicial Conduct are applied correctly and consistently. We will deliver an effective, responsive and professional service in a timely, consistent and transparent manner.

Our first business objective is to provide a timely, consistent and transparent service to all our users. Our Performance Targets are:-

PT 1 – to acknowledge receipt of all new complaints and correspondence from complainants, within 5 working days of receipt (100%).	Achieved (100%)
PT 2 – to deal with 90% of all correspondence received within 15 working days of receipt.	Achieved (100%)
PT 3 – when a preliminary investigation is required to establish if the potential complaint is within the Ombudsman’s remit, we will conclude this evaluation and provide a full reply within 30 working days/6 weeks, in 90% of cases.	Achieved (99%)
PT 4 – when a case is ready for review we aim to keep all complainants fully informed on a monthly basis in 98% of cases.	Achieved (98%)
PT 5 – we will publish our performance against these indicators in our Annual Report and on our website.	Achieved

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

Our Key Performance Indicators are:-

to keep our working practices under review, striving for continuous improvement, in order to deliver the best possible service to our customers;

All Achieved

to ensure our leaflets and Website are up to date and reflective of our organisation. We welcome feedback from our customers about how we could improve our service, and will learn from any complaints that we receive about our service, doing our best to put things right;

to work creatively to build and maintain our capability to deliver a service that is efficient, responsive and professional. We will have the right people, processes and supporting infrastructure in place; value diversity and the importance of a work-life balance; identify and address any gaps in training and knowledge; and

to ensure that our staff maintain a high level of skill in Complaints Handling and Investigations.

Our third business objective is to deliver our business in the most cost effective and efficient manner, and to operate efficiently.

Our Key Performance Indicators are:-

to operate within our budget, and in accordance with the relevant governance arrangements managing our risks and our information and to maintain constructive working relationships with all stakeholders.

Achieved

Annex D**Forecast and Actual Expenditure**

	Forecast	Actual
Staff costs and salaries	483,000	492,000
Office expenditure, Accommodation and IT Services	20,000	4,000
Service costs and Miscellaneous	5,900	3,000
Training	3,000	2,000
Travel and subsistence	1,100	1,000
Total expenditure	513,000	502,000

Annex E

Data since role of Judicial Appointments and Conduct Ombudsman was established

Financial year	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	
Cases received	304	314	278	379	470	645	810	828	
Cases determined	37	101	103	70	67	73	77	63	
Conduct (OJC, Tribunal, Advisory Committee)	4 upheld/ partial upheld 10 not upheld	10 upheld/ partial upheld 63 not upheld	44 upheld/ partial upheld 47 not upheld	21 upheld/ partial upheld 33 not upheld	14 upheld/ partial upheld 39 not upheld	14 upheld/ partial upheld 54 not upheld	23 upheld/ partial upheld 45 not upheld	23 upheld/ partial upheld 30 not upheld.	
Appointments (JAC)	5 upheld/ partial upheld 18 not upheld	1 upheld/ partial upheld 27 not upheld	1 upheld/ partial upheld 11 not upheld	0 upheld/ partial upheld 16 not upheld	2 upheld/ partial upheld 12 not upheld	2 upheld/ partial upheld 3 not upheld	2 upheld/ partial upheld 7 not upheld	2 upheld/ partial upheld 8 not upheld	
Ombudsman's Time (Days per week)	2	3	3.5	3.5	2.5	2.5	3	3	
Staffing (Headcount excl Ombudsman)	9	10	10	10	10	10	10 (9.4 FTE)	9 (8.4 FTE)	
Budget	Forecast	606,563	609,705	596,500	600,000	591,000	534,000	549,000	513,000
	Actual spend	475,392	494,894	564,708	584,928	539,428	457,000	546,000	502,000

ISBN 978-1-4741-0431-9



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