

Judicial Appointments &
Conduct Ombudsman

Annual Report 2014-15

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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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The Ombudsman's Statutory Remit

The Ombudsman is a Corporation Sole who acts independently of Government, the Ministry of Justice (MoJ) and the Judiciary. 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; and

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), a Tribunal President or a Magistrates' Advisory Committee.

In judicial appointment complaints the Ombudsman can:

- uphold 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 has been 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.

Foreword

This is my 9th Annual Report. I retire on 26th January 2016 after 10 years in post when my second and, by statute, final term comes to an end. I wish my successor well in what I believe to be an important, challenging and interesting task.

I was privileged to play a part in setting up JACO in early 2006, and subsequently being appointed by The Queen as the inaugural Judicial Appointments and Conduct Ombudsman. My overall strategic aim has been “to act as a catalyst for the improvement of the judicial appointments processes, and the first tier complaint investigation processes, with a view to reducing the number of complaints that reach me”.

In 2005 it was anticipated that most of my work would relate to judicial appointments. In practice, however, the vast majority has concerned judicial conduct. The very low number of “second tier” complaints about the judicial appointments process reflects clearly the quality of both the JAC’s selection processes, and its “first tier” complaint handling arrangements.

I have identified a significant number of improvements in the process by which complaints against judicial office holders are being considered. In particular, the first tier investigating bodies now generally appreciate the need to take timely and proportionate steps to verify what happened in respect of judicial conduct matters. I see far fewer cases where it appears that investigations have simply been allowed to “drift”.

The number of cases received by my Office continues to rise, as does the number in which I decide, following a detailed initial evaluation, that there is a prospect that I will make a finding of maladministration, thus prompting a full investigation. The number of full investigations that I completed in the year increased from 63 to 92, an increase of over 45%. I upheld or partially upheld 25. This headline figure might seem high, but it is important to set it in context. For example, the 19 upheld or partially upheld cases in which the JCIO were involved is broadly equivalent to just 1% of the JCIO’s caseload.

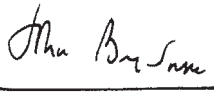
As I approach the end of my appointment, I would like to thank my team for their excellent work; several of them have been with me from the start. It is this level of staff retention that has been pivotal in coping with an ever increasing case load, and with an overall reduction in staffing. Expenditure in 2014/15 was almost 10% less than forecast – a forecast which had itself been significantly reduced from the previous year. In the 9 years since I was appointed my Office’s outturn expenditure has been lower than forecast every year; this amounts to a cumulative reduction of almost £500,000.

In the past year I have completed 99% of preliminary investigations within six weeks of receiving a completed complaint form. The increased number of cases

requiring a full investigation, combined with the reduction in staff, has inevitably meant that the time taken to complete full investigations has increased. I hope that this will start to fall once the Office has replaced one of the Investigating Officers, who retired during the year.

My staff have continued to go out of their way to ensure that I receive the full support that I need to carry out my statutory responsibilities, and to help everyone who contacts them, regardless of whether their concerns relate to my office. I very much appreciate the professional, effective and responsive way in which they carry out their duties. I would also like to thank Karamjit Singh CBE for acting as Temporary Ombudsman in 2 cases from which I recused myself, having identified a potential conflict of interest.

In conclusion, I believe the JACO team make a valuable and cost effective contribution to the Administration of Justice.



Sir John Brigstocke KCB

Performance

Targets

The JACO Office has achieved all its targets in the 2014/15 Business Plan (see Annex C) and remains committed to providing a high level of customer service. All correspondence and complaints are checked to assess whether they are within remit. This year saw an increase of 15% in the number of cases dealt with. The JACO Office received 952 cases and enquiries compared to 828 in 2013/14. The majority of complaints (641) fell within the Ombudsman's conduct remit.

Initial checks

There were 311 cases which, after consideration by a caseworker, were found to fall outside the Ombudsman's remit as they did not concern matters relating to judicial appointment or conduct. This figure represents an increase of 3% on last year. Where appropriate, complainants were signposted to organisations which might be able to help, or given information about who to approach for assistance.

JACO Office staff considered 638 cases, liaising with complainants for more specific information about their concerns. Of those, 295 were not taken forward, usually because the complaint was inadequately particularised or dealings with the first tier complaint body had not concluded.

Preliminary investigations

The Preliminary Investigation process

Complaints that do come within JACO's remit require a more detailed initial evaluation and are fast-tracked to enable the Ombudsman to determine whether or not the complaint requires a 'Formal Review'. JACO Office staff considered 281 cases in this way. This is a time consuming but important process which ensures that the Office's resources are concentrated on the cases which most require detailed consideration, and that complainants are advised within a reasonable timescale if there is no possibility of the Ombudsman finding maladministration.

The JACO Office has a target to complete 90% of preliminary investigations within 6 weeks of receipt of a completed complaint form or other information which is sufficient to enable the Ombudsman to consider the complaint. The Office met this target in 99% of cases.

Outcome of Preliminary Investigations

The Ombudsman decided that a full investigation was unnecessary in 188 cases, compared to 163 last year (an increase of 15%). The Ombudsman wrote personally to all of them and most accepted the explanation. The Ombudsman

referred 93 of the cases where issues came within remit for a full investigation; this is an increase of 25 cases accepted for investigation compared to 2013/14.

The Ombudsman does consider correspondence from people who are dissatisfied with the outcome of a Preliminary Investigation. The 2013/14 Annual Report referred to instances in which the Ombudsman decided after considering such representations that a full investigation was appropriate. There were no such cases in 2014/15.

Full reviews

The full review process

The investigation of complaints which require a full review are thorough, often involving the consideration of large volumes of complex documentation, and liaison with the complainant and the first tier complaint body. Achieving a thorough, fair and balanced review can be a lengthy process. The JACO Office does not, therefore, have a target for completing full investigations. It does, however, look to keep complainants informed on a monthly basis as to the position in the Ombudsman's investigations. It has met the target to update complainants on 98% of the occasions when an update is due.

Outcome of cases referred for a full review

The Ombudsman determined 92 cases this year (including cases carried forward from last year), including 2 which were delegated to a Temporary Ombudsman. 7 of these were from Judicial Office Holders whose own actions had been considered under the regulated disciplinary function. Most of these were from current or former Magistrates.

In addition there were 3 cases which the Ombudsman initially accepted for a full investigation but in which he subsequently decided (in some instances having received comments from the relevant first tier body) that a full investigation was not required.

25 of the complaints in which a full review took place were upheld or partially upheld. This was the same number as in 2013/14. It is relevant to note that:

- the Ombudsman did not find any maladministration in either of the 2 complaints concerning the JAC (in 1 of the cases the Ombudsman made a systemic recommendation which has been implemented). The very low level of complaints received and the absence of any finding of maladministration indicates that the JAC's selection processes, and its handling of any "first tier" complaints that it receives, are generally very good;
- the Ombudsman found maladministration in 19 complaints involving the JCIO; this includes cases initially considered by a Tribunal President or an Advisory

Committee but which were subsequently referred to the JCIO as it appeared that some form of disciplinary sanction might be appropriate¹;

- the total number of concluded investigations into complaints about Tribunal investigations increased significantly from 11 to 35. The Ombudsman found maladministration in respect of a Tribunal's investigation in 8 cases which represents 23% of the total number of determined complaints. Some of the cases in which the Ombudsman found maladministration related to investigations which had been carried out some years previously; and
- the Ombudsman found maladministration in respect of an Advisory Committee's actions in 1 complaint – out of a total of 9 determined complaints.

Overall, the number of complaints upheld by the Ombudsman suggests that the incidence of maladministration remains low when compared to the volume of applications for judicial appointments and conduct complaints. For example:

- applications for judicial appointments in 2014/15 exceeded 2500; and
- in broad terms the number of cases involving the JCIO which the Ombudsman upheld or partially upheld equates to approximately 1% of the JCIO's caseload (it is not possible to provide an equivalent figure for Tribunal and Advisory Committee cases as information about the total numbers of complaints considered by these bodies is not available).

Redress

In 7 conduct cases, a finding of maladministration rendered the initial decision reached by the first-tier body to be unreliable and the case was referred back for further consideration. The Ombudsman welcomed the positive approach of first tier bodies who agreed to reconsider matters.

There was 1 conduct case in which the Ombudsman concluded that the first tier body had failed to conduct adequate investigations. He did not set the decision aside as subsequent investigations had demonstrated that the original decision was not unreliable.

There were 18 conduct cases where the Ombudsman felt it appropriate for the first tier complaint body to apologise. In many instances, the relevant body had already agreed to do so.

The Ombudsman did not recommend any monetary compensation during 2014/15.

¹ This figure is different to that shown in the statistics and Annex A, in which conduct cases are shown as relating to the first tier body which was initially responsible for considering the complaint about the Judicial Office Holder's actions.

Post investigation correspondence and challenges to JACO decisions

This year the Ombudsman responded to 26 pieces of correspondence sent in response to reports that were finalised following a full review. There were no instances where the Ombudsman altered his findings or reopened an investigation. There have been no successful legal challenges to the Ombudsman's decisions in this financial year or any of the previous 9 years.

Emerging themes and issues arising from reviews

Appointments – the Judicial Appointments Commission

The Ombudsman considered complaints about:

- issues surrounding the information and guidance for candidates concerning preferred location choices; and
- reasonable adjustments and on line testing.

Conduct – the JCIO

Issues concerning the JCIO included:

- the process by which the JCIO considered whether complaints were “out of time”, including:
 - the process by which the JCIO considered whether there were exceptional circumstances that would warrant accepting complaints received outside the three month time limit introduced from October 2013 (see below and case study 3);
 - whether first tier bodies breached prescribed procedures in rejecting as “out of time” complaints relating to matters which had occurred more than a year previously but in which litigation had only recently ceased;
 - whether the JCIO breached prescribed procedures in not asking the Lord Chancellor or Lord Chief Justice to consider whether to accept complaints made outside the statutory time limits.²
- the process by which the JCIO considered allegations that Judges failed to disclose issues that should have precluded them from considering a particular case;
- concerns that complaints had been dismissed prematurely, including whether the JCIO should have sought further particularisation of the complainants’ concerns or considered further evidence;
- instances of poor case management, including:
 - failure to register complaints received, which meant that correspondence was not acknowledged and an investigation was not started;
 - failure to keep complainants informed where the caseworker changed during the investigation;
 - delay, including delay in progressing cases referred from other investigating bodies proposing a disciplinary sanction;

² Legislation in force prior to October 2013 provided that when complaints related to an ongoing state of affairs, they had to be made within twelve months of the point when the ongoing state of affairs ceased. It also allowed people whose complaints had been rejected on the basis that they were out of time to ask the JCIO to refer the matter to the Lord Chancellor or Lord Chief Justice.

- delay in concluding investigations when all necessary information had been obtained.
- concerns that the JCIO had failed to consider evidence which the complainant believed suggested that a Judge's sentences were outside the scope of sentencing guidelines; and
- the adequacy of the JCIO's correspondence, including whether it identified the correct judge or hearing date. There have been instances in which shortcomings in a final letter were sufficient to warrant a finding of maladministration, notwithstanding that the process up to that point had been appropriate.

The Ombudsman considered a number of cases in which people expressed concern that they had been misled about the time limits for submitting complaints. They said that they had been advised prior to October 2013 that they had twelve months to submit a complaint and had acted accordingly. However, when the complaints were made after October 2013 they related to matters which had occurred more than three months previously and the JCIO rejected them under legislation which had by then come into force. The Ombudsman upheld 5 of these cases and set the JCIO's decision aside in two cases (see case study 3). Following this, the JCIO conducted a "trawl" to identify and consider any similar complaints, which identified a further case which was subsequently the subject of a complaint to the Ombudsman. In this instance the Ombudsman gave weight to the fact that the complaint against the Judge had been identified and reconsidered in deciding not to find maladministration.

Complaints about delay remain a recurrent theme. However, the JCIO's case management has generally improved and there are very few cases in which it appears that the management of an investigation has been allowed to "drift" for long periods of time. The JCIO has been more pro-active in apologising at the time of any delay, and it has made improvements in keeping complainants adequately informed.

Tribunal Presidents:

Issues raised included:

- the time taken to conclude an investigation and keeping complainants informed of the progress of their complaint;
- allegations of biased or partial investigations, including the extent to which an Investigating Judicial Office Holder should take account of a complainant's actions in deciding whether the Tribunal member complained against acted appropriately;
- whether an Investigating Judicial Officer considered all aspects of a complaint;

- allegations that a Tribunal had ignored correspondence and that an Investigating Judicial Office Holder (and subsequently the JCIO) had rejected the complaint on the basis that it was “out of time”;
- concerns about the adequacy and completeness of investigations by an Investigating Judicial Officer before referring the matter to the JCIO;
- whether an Investigating Judicial Office Holder had made sufficient enquiries or taken appropriate steps to obtain independent verification, including where the recording of a Tribunal hearing had been destroyed;
- issues surrounding the completeness and accuracy of dismissal letters; and
- concerns about Investigating Judicial Office Holders considering complaints which included observations about their actions.

Magistrates’ Advisory Committees

Matters requiring investigation included:

- issues surrounding the process by which complaints received outside the three month time limit were rejected;
- the process by which correspondence received expressing concerns about Magistrates’ actions is referred to Advisory Committees;
- allegations that Advisory Committee members who considered complaints had a conflict of interest that should have precluded their involvement;
- whether a Conduct Panel acted appropriately in finding that a Magistrate’s use of personal IT on Court business amounted to misconduct when the Magistrate stated that using personal IT in this way was a commonly accepted and condoned practice;
- delay in concluding complaints and keeping parties adequately informed;
- whether an Advisory Committee acted appropriately in dismissing a concern about a Magistrate’s actions when it subsequently took the view that the issue in question contributed to an overall picture of misconduct;
- whether a Conduct Panel should take account of evidence in respect of a Magistrate’s previous conduct in deciding whether a specific complaint was substantiated; and
- whether a Conduct Panel’s decision was supported by evidence or reflected personal and subjective views.

Complainants and Stakeholders

Our communications

Staff in the Ombudsman's Office have:

- worked with the MoJ Communications Directorate and the Cabinet Office to replace the Ombudsman's website with pages on the www.gov.uk website, ensuring that the information provided is appropriate and easily accessible. The Office encourages people to use the website in order to find out about the Ombudsman's role, and to access the on-line complaint forms; and
- reviewed and revised the leaflet describing the Ombudsman's conduct remit. This has included developing a revised complaint form that will assist people to be clearer concerning the matters about which they wish to complain. It also indicates that the JACO Office will make greater use of e-mail as a way of communicating.

Staff in the JACO Office are currently working to develop an "Easy Read" version of the JACO literature.

Working with Stakeholders

The Ombudsman and his Office have maintained good relationships with all its stakeholders, including a very constructive "trilateral" discussion with the Lord Chancellor and the Lord Chief Justice. The Ombudsman met regularly with MoJ officials, the Chairman of the JAC, and the Head of the JCIO.

In addition officials in the Ombudsman's Office have:

- discussed the Ombudsman's remit and points emerging from his investigations with the Lord Chief Justice and with groups of Senior Tribunal Judges and Advisory Committee Secretaries;
- met with officials within the JCIO, the JAC, the MoJ and the Judicial Office; and
- met, and briefed, Senior Investigators and Public Complaints Commissioners from Curacao, Nigeria and Uganda.

Compliments and complaints received

The Ombudsman's Office received a short note conveying thanks from the Senior Investigators and Public Complaints Commissioners from Curacao, Nigeria and Uganda for useful and constructive discussions about the Ombudsman's work.

Below are some of the comments we have received about cases finalised this year:

“Thank you for your response and your advice. I sincerely appreciate the fact that you took your time to respond.”

“JACO has brilliant investigators [The complainant] is highly impressed with them”.

“Thank you for the final reports which are extremely thorough and detailed. It restores my confidence greatly that the Ombudsman acknowledges some of the processes followed to have been ostensibly flawed. Please accept and pass on my sincere thanks for the investigation, report compilation and outcome.”

There have been 5 instances in which complaints have been made against members of staff in the Ombudsman’s Office, or where the Office has become aware that there had been shortcomings in the level of service provided. These have been given careful consideration. The Ombudsman’s Office has reimbursed two people for expenditure incurred when post was incorrectly sent out without a stamp and, where appropriate, has apologised if an error has been made. It has also put in place procedures, including redesigning complaint forms, to prevent a recurrence.

Corporate Governance

Resources

Financial Resources

The JACO Office is committed to managing its resources effectively. It has in place sound and appropriate financial and governance arrangements which enable our key business targets and objectives to be met.

Staff Resources

The staffing in the Ombudsman's Office was reviewed in 2013/14. As a result the previous Head of Office post was merged with the Senior Investigating Officer's post, resulting in a reduction of 14% in the Office's expenditure. It was also agreed that the staffing level would be reviewed in the year to ascertain whether the staffing level was appropriate.

During the year one of the Investigating Officers retired. This meant that throughout most of the year the Office had 8 staff (7.5 full-time equivalent) including the Ombudsman (0.6 full-time equivalent). The previously planned review was conducted and it was agreed that steps should be taken to replace the Investigating Officer who had retired.

The Ombudsman's Office has a very low level of sick absence, an overall average of 2.5 days, and well below the MoJ target of 7.5 days per person. All sick absence is managed in accordance with the MoJ's sickness absence policies.

Training and Development

All staff in the Ombudsman's Office are fully trained to carry out their respective duties, and have a high level of complaints investigation experience between them. They are all qualified to Level 7 BTEC Advanced Professional Award in Complaints Handling and Investigations.

Information Assurance

A key priority continues to be the protection of information that we hold about complainants and those complained about; the team are fully aware of, and responsible for, the safeguarding of this information.

Other Statutory and Departmental Requirements

In accordance with the Memorandum of Understanding between the Ombudsman and the Ministry of Justice, the JACO Office 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, it 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 investigations. It remains committed to disclosing whatever it can, in line with legislation.

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Annexes

Annex A

2014/15 Statistics

Breakdown of complaints received

	Total number of complaints & enquiries received	Appointment related cases received	Conduct related cases received	Other enquiries received
April	67	0	44	23
May	72	0	47	25
June	75	0	47	28
July	102	0	55	47
August	71	0	50	21
September	98	1	75	22
October	82	0	55	27
November	81	0	50	31
December	78	0	53	25
January	72	0	49	23
February	72	0	52	20
March	82	0	63	19
	Number of complaints & enquiries	Appointment related cases	Conduct related cases	Other enquiries received
TOTALS	952	1	640	311

Breakdown of conduct complaints 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
640	512	102	26

Breakdown of cases finalised³

	Cases dealt with at 1st level – ‘initial check’	Cases finalised at 2nd level – ‘fast track’	Cases finalised following a 3rd level ‘full investigation’ ⁵
Appointment	0	0	2
Conduct – relating to JCIO	183	107	46
Conduct – relating to Tribunals	96	77	35
Conduct – relating to Advisory Committees	16	4	9
Total	295	188	92

In addition, there were 3 cases which the Ombudsman initially accepted for a full investigation but in which he subsequently decided that it was not necessary, advising the complainants accordingly.

Cases investigated, determined and finalised⁵

	Not upheld	Upheld and partially upheld	Total
Appointment	2 (100%)	0	2
Conduct – relating to JCIO	32 (70%)	14 (30%)	46
Conduct – relating to Tribunals	26 (74%)	9 (26%)	35
Conduct – relating to Advisory Committees	7 (78%)	2 (22%)	9

³ 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 31/3/15 have been carried into the next year, and will be finalised in the next year.

⁴ Of cases received in 2014/15 93 were accepted for a full investigation.

⁵ 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 and Tribunals.

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 investigations, 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 – Appointment

The Ombudsman received a complaint from someone who had applied for appointment as a salaried Tribunal Judge. The candidate had performed well at a selection day, where he had been assessed as a “strong” candidate. He had previously indicated that he was only interested in working at one location at which there was only one vacancy. He was not recommended for appointment as the JAC’s Selection and Character Committee concluded that there was another, more meritorious, candidate who had similarly asked to be considered only for vacancies at the same location.

Whilst requesting feedback the complainant enquired whether there would have been more prospect of appointment if he had indicated an interest in sitting at other venues. In response the JAC explained that it was not possible to say as there may have been other successful candidates who were more meritorious and it was rarely possible to allocate all the successful candidates to their preferred locations but that the Selection and Character Committee gave the matter careful consideration when making recommendations to the Lord Chancellor.

The complainant subsequently complained to the JAC that its information pack and guidance on posting preferences led him to limit his choice to one venue and that he would have been offered a post if he had identified more than one venue. The complainant also provided the JAC with anecdotal evidence of other successful candidates who were afforded flexibility in terms of location, venue and arrangements to work from home. The JAC’s response was that its role was to provide suitable candidates for appointment and the terms and conditions of those appointments were the responsibility of the Ministry of Justice.

The Ombudsman did not uphold the complaint. He found that it was likely that the complainant would have been recommended for selection if he had indicated a willingness to work in more than one location and said that he could see why the complainant felt aggrieved that, with the benefit of hindsight, he might have been selected for appointment. However he found that:

- there was no evidence that the JAC’s decision not to appoint the complainant to the only post he indicated a preference for was inconsistent with the principle of selection on merit;
- the decision to indicate interest in sitting at only one venue was one which the complainant had made; and

- it was his understanding that the JAC had no influence concerning flexibility in terms of location and working arrangements. Therefore the JAC could not comment on such matters. The Ombudsman said that he was satisfied that the JAC answered the complainant's concerns, as far as it was able.

The Ombudsman concluded that there was no maladministration in the JAC's handling of the application for appointment or the subsequent complaint.

Conduct:**Case Study two – Judicial Conduct Investigations Office**

This case concerned a complaint that the JCIO confused the date of the hearing, delayed the investigation, did not consider the tone and context of what the Judge said when listening to the tape of the hearing and that the JCIO's process of requesting third party comments was unfair as it was biased towards the Judge.

The complainant attended the Principal Registry of the Family Division (PRFD) as the Respondent in respect of an Order of Costs relating to the division of assets between him and the Applicant. After the hearing he complained about the actions of the Judge at the hearing including that the judge was impatient with him, his tone was condescending, blaming and degrading. He alleged that the judge made him feel like a "child being told off" and had rushed him and kept cutting him off mid-sentence.

The JCIO wrote to the Court to request the recording of the hearing. However, it provided the Court with the wrong date of the hearing and the recording the JCIO received did not contain the correct hearing. The JCIO then spent four months obtaining third party comments to try and verify what had happened at the hearing. The caseworker eventually realised the error regarding the date of the hearing and requested and listened to the correct recording. The JCIO dismissed part of the complaint on the basis that it was mistaken and part of the complaint on the basis that it was about judicial decision and judicial case management.

The complainant then complained to the Ombudsman that the JCIO:

- confused the date of the hearing;
- attempted to blame him for the very long delay because he mentioned the wrong date once;
- did not appreciate the tone and context of what the Judge said when it listened to the recording of the hearing; and
- was biased towards the Judge.

The Ombudsman partially upheld the complaint as he was concerned that the significant delay in investigating the case was caused by errors in identifying the correct date of the hearing despite several pieces of information alerting the JCIO to the correct date. He found that these shortcomings amounted to maladministration and was pleased that the JCIO agreed to apologise to the complainant for the delay.

The Ombudsman did not uphold any further points in the complaint as he was satisfied that the JCIO conducted an appropriate investigation once it realised the correct date of the hearing in question.

Case Study three – Judicial Conduct Investigations Office

The Ombudsman concluded a number of investigations into complaints concerning the process by which the JCIO had rejected complaints made after 1 October 2013 on the basis that they were “out of time”.

The background is that, until 30 September 2013, legislation included a general requirement that people complain to the JCIO within twelve months of the matter complained of. This was reduced to three months from 1 October 2013, with the caveat that the JCIO could only accept complaints outside that time in exceptional circumstances. The Ombudsman welcomed this change in principle.

The Ombudsman received five complaints in the period from January to March 2014 from people whose complaints had been rejected on the basis that they were outside the three month time limit introduced from 1 October 2013. All five complainants had told the JCIO that they had been advised from a reliable source (eg the JCIO’s website, literature issued by the JCIO or HM Courts and Tribunals Service, or in telephone conversations with the Ombudsman’s Office or the JCIO) that they had twelve months to submit a complaint. They complained to the JCIO within that timeframe. However, the JCIO classed the complaints as “out of time” as they had not been within the time limits that had since come into force.

The Ombudsman accepted the JCIO’s observation that it was not in a position to publicise the reduced time limits until Parliament had passed the relevant legislation in July 2013, commenting that this created the real possibility that people might be unavoidably misinformed about the reduction in time limits. The JCIO accepted that it had been too strict with these cases and had not fully considered the reasons why the people had not complained sooner. The Ombudsman agreed, saying that his impression was that the JCIO had not properly operated its own procedures to consider the possibility that people might have been misinformed about the post-October 2013 time limits. He found that this amounted to maladministration and upheld the complaints. He recommended that the Head of the JCIO apologise to all the complainants, and he set aside the JCIO’s decision in three of the cases. In the other two cases he found that the JCIO followed an appropriate process when it subsequently concluded that the issues complained about did not raise a question of misconduct.

Case Study four – Tribunal President

The complainant had previously complained to the Ombudsman about the investigation of an earlier complaint by a Tribunal. The Ombudsman had upheld his earlier complaint and asked for it to be re-investigated as he considered that certain issues had not been properly considered when it had originally been dismissed.

The complainant told the Ombudsman that there had been delay in starting the investigation and that the complaint had not been properly re-investigated.

The Ombudsman found that there had been a delay of almost two months before the complaint was re-investigated, but that this had been due to administrative reasons outside the Regional Tribunal Judge's control, because HMCTS failed to provide the documents he required in order to start his investigation. The Ombudsman was critical of the Regional Tribunal Judge for failing to write to the complainant to explain the delay or offer an apology at the time.

The Ombudsman was content that the Regional Tribunal Judge conducted a proper investigation into all the outstanding points in the complaint, and that he had good reason for dismissing them. For this reason the Ombudsman did not uphold the substantive complaint.

Case Study five – Tribunal President

This complaint was brought by a Welfare Rights worker who expressed concern about the process by which a District Tribunal Judge considered a complaint arising from a Social Security appeal hearing. The complainant said that the District Tribunal Judge had failed to provide adequate reasons for dismissing a complaint on the basis that there was no misconduct.

The background was that the Welfare Rights worker had produced a letter during the hearing of which the Panel were unaware and it adjourned to make enquiries, which showed that the letter related to a later benefit claim. On returning, the Tribunal were very critical of the Welfare Rights worker. He subsequently complained that the Tribunal Judge had said that the appeal had been “highjacked” and had openly accused him of deliberately trying to mislead the Tribunal – an allegation which he strenuously denied. The District Tribunal Judge said in his response to the complaint that he could find no evidence of misconduct.

The Ombudsman found that the District Tribunal Judge had conducted a thorough investigation. He considered the Tribunal’s record of proceedings; obtained comments from all three Tribunal members and the Tribunal Clerk; and suggested that the Welfare Rights worker seek comments from someone described on the record of proceedings as a “friend” of the claimant. These demonstrated that the Tribunal Judge had been very critical of the Welfare Rights worker’s actions and may have used the words described in the complaint.

The Ombudsman found that the issue for the District Tribunal Judge was not whether the Welfare Rights worker had deliberately sought to mislead the Tribunal but whether the Tribunal Judge had acted unreasonably in criticising the Welfare Rights worker in the way that he did. The Ombudsman observed that it was therefore necessary for the District Tribunal Judge to consider the context in which the criticisms were made. The District Tribunal Judge’s findings included that the Welfare Rights Worker had misled the Tribunal and that the Tribunal’s Record of Proceedings indicated that the Tribunal believed that it had been done deliberately. He also noted that none of those who had commented had been critical of the Tribunal Judge’s actions. The Ombudsman was content that the District Tribunal Judge took account of both what had happened and the context in which comments were made.

The Ombudsman was critical of the District Tribunal Judge’s final letter, which summarised the evidence received and set out the conclusion that there was no misconduct. He considered that it would have been clearer if the District Tribunal Judge had set out the conclusion that the Tribunal Judge had criticised the Welfare Rights worker but that the evidence about the context in which this was done indicates that he did not act inappropriately. The Ombudsman did not find that these shortcomings amounted to maladministration.

Case Study six – Magistrates’ Advisory Committee

The Magistrate had been the subject of a complaint concerning an exchange of negative comments with another Magistrate about an advocate. The exchange had taken place in court where it could have been overheard by members of the public. The matter was investigated by the Advisory Committee and subsequently referred to a Conduct Investigation Panel, which determined that the allegations were not substantiated and dismissed the complaint.

The Magistrate made a wide ranging complaint to the Ombudsman, including that he had been subjected to a Conduct Investigation Panel when there was no evidence against him and that there had been poor management of the investigation process, including delay.

The Ombudsman partially upheld the complaint. The Advisory Committee took full responsibility for a number of minor errors in the period before the Panel hearing, which collectively amounted to maladministration on the basis that it:

- delayed its decision to refer the matter to a Conduct Investigation Panel by two months and failed to update the Magistrate in the interim;
- did not provide the Magistrate with papers for the Panel hearing within the prescribed timescales;
- failed to advise the Panel Chair that the Magistrate would be accompanied to the hearing; and
- sent correspondence containing careless errors.

The Ombudsman, however, was satisfied that the Advisory Committee had followed an appropriate process in referring the matter to the Conduct Investigation Panel and found no maladministration in this regard.

The Ombudsman did not consider any redress was necessary as the Advisory Committee had already apologised for its shortcomings. None the less the Advisory Committee undertook to apologise again and the Ombudsman was grateful for its constructive approach.

Annex C

Summary of Performance against Business Plan targets

Our primary role in undertaking independent investigations 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 continue to 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 (99.5%)
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 investigation we will 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

<p>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.</p>	
<p>Our Key Performance Indicators are:-</p>	
<p>to keep our working practices under review, striving for continuous improvement, in order to deliver the best possible service to our customers;</p> <p>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;</p> <p>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</p> <p>to ensure that our staff maintain a high level of skill in Complaints Handling and Investigations.</p>	<p>All Achieved</p>
<p>Our third business objective is to deliver our business in the most cost effective and efficient manner, and to operate efficiently.</p>	
<p>Our Key Performance Indicators are:-</p>	
<p>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.</p>	<p>Achieved</p>

Annex D

Budget Allocation and Actual Expenditure

	Allocation	Actual
Staff costs and salaries	425,000.00	388,000.00
Office expenditure, Accommodation and IT Services	14,440.00	14,355.00
Service costs and Miscellaneous		
Training	4,000.00	1,157.00
Travel and subsistence	1,560.00	962.00
Total expenditure	445,000.00	404,474.00

Expenditure by the Ombudsman's Office has been less than the resources allocated in each of the nine years since the Office was established.

Annex E**Budget Expenditure**

Financial year	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15
Budget Allocation	606,563	609,705	596,500	600,000	591,000	534,000	549,000	513,000	445,000
Actual spend	475,392	494,894	564,708	584,928	539,428	457,000	546,000	502,000	401,000
Saving	131,171	114,811	31,292	15,572	51,572	77,000	3,000	11,000	44,000

Annex F

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	2014/15
Cases received	304	314	278	379	470	645	810	828	952
Cases determined	37	101	103	70	67	73	77	63	92 ⁶
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.	25 upheld/ partial upheld 65 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	2 not upheld
Ombudsman's Time (Days per week)	2	3	3.5	3.5	2.5	2.5	3	3	3
Staffing	9	10	10	10	10	10	10 (9.4 FTE)	9 (8.4 FTE)	8 (7.5 FTE)
Budget	606,563	609,705	596,500	600,000	591,000	534,000	549,000	513,000	445,000
Actual spend	475,392	494,894	564,708	584,928	539,428	457,000	546,000	504,000	401,000

⁶ In 2014/15 there were, in addition, three cases which the Ombudsman initially accepted for a full investigation but subsequently decided that it was not necessary.

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