

Judicial Appointments
Conduct Ombudsman
& **Annual Report 2015-16**

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Annual Report 2015-16

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of the Constitutional Reform Act 2005**

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Contents

The Ombudsman's Statutory Remit	4
Foreword	6
Performance	8
Complainants and Stakeholders	15
Corporate Governance	17
Annexes	20
A 2015/16 Statistics	21
Breakdown of complaints received	21
Breakdown of complaints received by first tier organisation	21
Breakdown of cases finalised	22
Cases investigated, determined and finalised	22
B Case studies	23
C Summary of performance against Business Plan	31
D Forecast and actual expenditure	33
E Judicial Appointments and Conduct Ombudsman Data from 2010/11 – 2015/16	34

The Judicial Appointments and Conduct Ombudsman

Sir John Brigstocke's second five year term as Judicial Appointments and Conduct Ombudsman ended on 25 January 2016. He was replaced by Paul Kernaghan CBE QPM, who was selected following an open competition and appointed by Her Majesty the Queen on the Lord Chancellor's recommendation.

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 whose actions have been the subject of an investigation, about how the matter was handled under the regulated disciplinary function. Such matters are considered by the Judicial Conduct Investigations Office (JCIO), a Tribunal President or a Magistrates' Advisory Committee in the first instance although only the Lord Chancellor and the Lord Chief Justice (or a Designated Judge acting on his behalf) may be involved later in the process as only they can impose a sanction on a Judicial Office Holder.

This is often referred to as a "second tier" investigation function, reviewing steps taken by the "first tier" bodies, listed above.

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 first Annual Report, having taken up office on 26th January 2016, following the conclusion of Sir John Brigstocke's second five year term of office. It is right and proper that I pay tribute to Sir John as he was closely involved in the creation of the Judicial Appointments and Conduct Ombudsman's function and then served for ten years as the first Ombudsman. It is obvious to me that both the Ombudsman's office and colleagues in the relevant "first tier" complaints bodies have benefited from the stability and continuity he provided.

I have sought in my first few weeks in office to establish appropriate relationships with the Judicial Appointments Commission and those bodies who handle matters under the regulated disciplinary function, including the Lord Chief Justice, the Judicial Conduct Investigations Office, Tribunal Presidents and Magistrates' Advisory Committees, as well as Ministry of Justice officials. I am grateful for the time and effort colleagues have devoted to increasing my understanding of their roles and relevant complaints processes.

The statistics, set out later in this report, provide a comprehensive overview of the workload managed by my office over the last year, including the period before I took office. My initial impressions are consistent with my predecessor's views contained in his last Annual Report. Judicial appointments currently give rise to very few complaints and this suggests that the ongoing work of the Judicial Appointments Commission is delivering an appointments process which is perceived by most to be both fair and robust.

I also appreciate, given the volume of complaints considered under the regulated disciplinary function and the large number of complaint handling bodies, that it would be very difficult to completely eradicate maladministration in respect of matters that fall within my conduct remit. Indeed my report lists and describes some instances in which the conduct investigation process has gone seriously wrong. However, this needs to be set in context. Sir John Brigstocke said in his final Annual Report that he had identified a number of significant improvements in the process for considering conduct matters and the number of cases upheld or partially upheld was less than 4% of the cases determined. It is also the case that the number of JCIO cases in which maladministration was found amounts, in broad terms, to about 0.2% of the JCIO's caseload.

I am conscious that my remit covers not only complaints against judicial office holders but also complaints from judicial office holders who have themselves been the subject of complaints. An effective complaints regime is essential to public accountability and is a standard feature of all public service functions in the United Kingdom. However, I recognise the impact complaints can have on those subject to them and I will seek to ensure that relevant complaints are finalised as quickly as possible, fairly and in accordance with legislation and guidance.

My goal is an Ombudsman function which is rigorous but also humane and which seeks to assist by highlighting 'learning points' where appropriate. My first such recommendation related to the handling of complaints where litigation is ongoing and it is known that the office holder is going to retire. I recommended that such matters should be fully investigated and not set aside pending the outcome of any related appeal proceedings. The legislation is very clear that a complaint against a judicial office holder who retires is automatically terminated. Thus, an understandable desire to await the outcome of an appeal could inadvertently lead to cases where a complainant perceives their complaint to have been thwarted owing to the retirement of a judicial office holder. In a few cases where retirement resulted in the complaint investigation being closed, I am satisfied that there was no intention to achieve that outcome. However, the perception can be damaging.

Finally I would like to thank Karamjit Singh CBE for acting as Temporary Ombudsman in respect of two cases during the year.

Paul Kernaghan CBE QPM

Performance

Targets

The Judicial Appointments and Conduct Ombudsman (JACO)'s Office has achieved all its targets in the 2015/16 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.

The JACO Office revised the information on its website during 2014/15. Following this there was a decrease in the number of enquiries and complaints received (including a reduction in the number of enquiries and complaints which clearly fell outside the Ombudsman's remit). The JACO Office received 775 cases and enquiries compared to 952 in 2014/15. The majority of complaints fell within the Ombudsman's conduct remit.

Initial Checks

There were 258 cases which, after consideration by a caseworker, were found to fall clearly outside the Ombudsman's remit as they did not concern matters relating to judicial appointment or conduct. This figure represents a 17% decrease from 311 cases 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 517 cases, liaising with complainants for more specific information about their concerns. Of those, 258 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 and which are taken forward require a more detailed initial evaluation and are fast-tracked to enable the Ombudsman to determine whether or not the complaint requires a 'Full Review'. In most cases this entails the Ombudsman forming a view as to whether there is a prospect of his finding maladministration, although the Ombudsman will also consider at this stage whether it is reasonable, in all the circumstances, to accept complaints that have been made to him outside the time limits set out in the Constitutional Reform Act 2005.

This is an 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. 261 cases were assessed in this way.

The JACO Office has a target to complete 90% of preliminary investigations within 6 weeks 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 191 cases, compared to 188 last year (an increase of 2%). This included 1 case determined by a Temporary Ombudsman. The Ombudsman wrote personally to all of these complainants and most accepted the explanation. The Ombudsman referred 70 of the cases for further investigation; this is a decrease from 93 cases accepted for investigation in 2014/15.

Of the cases referred for further investigation 34 related to matters considered by the JCIO; 24 related to matters considered by Tribunals; 11 related to matters considered by Advisory Committees; and 4 were from applicants for Judicial Office.¹

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 the last two reporting years.

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 each month as to the position in the Ombudsman's investigations. It has met the target to update complainants on 99.4% of the occasions when an update is due.

Section 112 of the Constitutional Reform Act 2005 requires the Ombudsman to submit draft reports in respect of full investigations into matters that fall within his conduct remit to the Lord Chancellor and Lord Chief Justice, and to take account

¹ The sum of these figures is more than the 70 cases accepted for further investigation as it includes 3 cases in which judicial conduct matters were initially considered by a Tribunal or Advisory Committee and the matter subsequently referred to the JCIO. In the Annex A statistics conduct cases are shown as relating to the first tier body that was initially responsible for considering the complaint against the Judicial Office Holder's actions.

of comments received in finalising his views. He is similarly required, by section 103 of the Constitutional Reform Act 2005, to submit draft reports in respect of appointments matters to the Lord Chancellor and JAC Chairman. There was 1 case during 2015/16 in which comments received at this stage prompted the Ombudsman to reconsider the conclusions that he was minded to make. The Ombudsman subsequently commented that this demonstrated the value of this final scrutiny stage.

Outcome of cases referred for a Full Review

The Ombudsman determined 70 cases this year (including cases carried forward from last year. 1 of these cases was determined by a Temporary Ombudsman.

4 of the cases which the Ombudsman determined 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 5 cases which were initially referred for further consideration in which the Ombudsman subsequently decided (in some instances having received comments from the relevant first tier body) that a full investigation was not required.

10 of the complaints in which a full review took place were upheld or partially upheld. This compared with 25 in 2014/15. It is relevant to note that:

- the Ombudsman finalised investigations into 3 complaints in respect of matters within his judicial appointments remit. He did not uphold any;
- the Ombudsman upheld or partially upheld 6 cases involving the JCIO 1 of these was from a Judicial Office Holder who had been the subject of an investigation;
- the Ombudsman partially upheld 2 complaints in respect of complaints handled by Tribunal Presidents (or delegated Investigating Judicial Office Holders within Tribunals); and
- the Ombudsman partially upheld, 2 cases in respect of investigations conducted by Advisory Committees.

Issues which caused the Ombudsman to uphold, or partially uphold complaints, included poor record keeping (to a degree which made it impossible to be certain what investigation process was followed; uncertainty about the distinction between judicial decisions and judicial case management on one hand and personal conduct on the other; not inviting complainants to state exceptional circumstances as to why their complaint against a Judicial Office Holder was “out of time” and making assumptions about complainants’ personal circumstances in deciding whether there were exceptional reasons for submitting a complaint late; broadening a complaint without seeking further particularisation; delay and poor case management; and shortcomings in the correspondence from first tier investigation bodies.

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:

- there were 1230 applications for judicial appointments in the Recorder Competition run in 2015/16. This led to just 3 complaints to the Ombudsman, none of which were upheld; and
- in broad terms the number of cases involving the JCIO which the Ombudsman upheld or partially upheld equates to approximately 0.2% 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

Section 111 of the Constitutional Reform Act 2005 enables the Ombudsman to set aside a determination reached by a first tier body if he finds that there was maladministration which renders the original decision unreliable. The Ombudsman exercised that power in respect of 3 cases in 2015/16. In these cases the relevant first tier body had previously agreed to reopen its investigation.

There were 9 cases in which the Ombudsman found that an apology was an appropriate redress. In 7 the relevant first tier body had agreed to write. In 2 others the Ombudsman found that apologies already provided by the first tier body were sufficient.

The Ombudsman did not recommend any monetary compensation during 2015/16.

In addition there were 8 cases in which the relevant first tier body agreed to write apologising for matters about which the Ombudsman had concerns but which did not cause him to uphold or partially uphold a complaint. In general such concerns related to the case management of first tier investigations (including the extent to which interested parties were kept updated) or the adequacy of correspondence.

Post investigation correspondence and challenges to JACO decisions

This year the Ombudsman responded to 21 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 nine years.

Emerging themes and issues arising from investigations

Appointments – the Judicial Appointments Commission

There were few complaints involving the JAC this year (4 new cases referred for investigation and 3 concluded during the reporting period with none upheld). The Ombudsman considered complaints about:

- issues surrounding guidance and the information provided to candidates prior to an online test;
- the background of the assessors running a selection day;
- the need to provide references prior to notification of success at the short-listing stage; and
- delay by the JAC in notifying candidates of the outcome.

Conduct – the JCIO

Issues other than those which caused the Ombudsman to uphold or partially uphold complaints in respect of JCIO complaints included:

- the handling of correspondence from people who send (or copy) a large volume of correspondence (usually e-mail correspondence) about matters which the JCIO cannot investigate;
- less serious concerns about delay and poor case management and the adequacy of JCIO correspondence, including the circumstances in which it might be appropriate for the JCIO to acknowledge the death of complainants' friends or relatives (e.g. where the person's original complaint concerns a Coroner's actions);
- the process by which the JCIO dismissed a complaint on the basis that it was vexatious; and
- the handling of cases when a Judicial Office Holder is about to retire.

Tribunal Presidents:

Issues raised included:

- allegations of biased or partial investigations;
- whether an Investigating Judicial Office Holder considered all aspects of a complaint;
- concerns about cases which have been deferred pending completion of the complainant's proceedings;
- whether an Investigating Judicial Office Holder had taken appropriate steps to obtain independent verification;

- delay in concluding investigations; and
- issues of communication including keeping complainants informed and updated and whether decisions could have been better explained.

Magistrates' Advisory Committees

Matters requiring investigation included:

- the process by which complaints are rejected by Advisory Committees;
- the process followed in dealing with complaints which require a conduct panel hearing;
- whether a Conduct Panel took into account all relevant evidence;
- whether a Conduct Panel's decision was supported by evidence and the adequacy of Advisory Committee records; and
- delay in concluding complaints and keeping parties adequately informed.

Systemic recommendations made

During 2015/16 the Ombudsman made a number of systemic recommendations, including:

- the steps that first tier bodies should take when it is known that a Judicial Office Holder is about to retire;
- that the JCIO should consider issuing guidance setting out the extent to which it will respond to people who circulate and copy large volumes of information and supporting documents to a number of recipients. The Ombudsman accepted that considering all documentation received in this way might place a disproportionate burden on first tier investigating bodies such as the JCIO;
- in circumstances where a complainant requests that a complaint is withdrawn and the JCIO believes that there is a possibility that the complainant might want it reinstated (e.g. when litigation is concluded) then the JCIO should discuss the possibility of deferring the investigation and provide advice about the issues that would affect whether it might be rejected in future (e.g. on the basis that it was "out of time"; and
- the need to maintain file notes covering recording enquiries made as part of an investigation.

In addition, there were two cases in which the Ombudsman did not make systemic recommendations for change as the relevant first tier body had already put measures in place to address the problems he had identified.

Overall impression

The very low numbers of complaints in the past 2 years from applicants for Judicial Appointment may partially reflect the fact that the JAC has run fewer selection exercises. However, it also shows that the observation in the Ombudsman's 2014/15 Annual Report that the very low level of complaints received, combined with absence of any finding of maladministration, indicates that the JAC's selection process, and its handling of "first tier" complaints was generally very good applies equally to 2015/16.

The case studies at Annex B show that there have been instances in which the judicial conduct investigations process has fallen significantly short of what could reasonably be expected. However, this needs to be seen in the light of the fact that there has been a 60% reduction in the number of cases that the Ombudsman has upheld or partially upheld. The reduction has been in respect of cases involving the JCIO and Tribunals whereas the number of complaints against Advisory Committees which have been upheld remains at a very low level. We are aware that the JCIO has also taken steps to learn from previous investigations and mistakes and that it continues to proactively engage with Advisory Committees to provide advice and training. These figures suggest that these measures have had significant benefit during 2015/16.

Complainants and Stakeholders

The Ombudsman and his Office have maintained good relationships with all its stakeholders. Sir John Bristocke had a very constructive “trilateral” discussion with the Lord Chancellor and the Lord Chief Justice. Other people he met included the JAC Chairman, the MoJ Permanent Secretary and other senior MoJ officials and the Head of the JCIO.

Since becoming Judicial Appointments and Conduct Ombudsman Paul Kernaghan has met with the Lord Chief Justice, the JAC Chairman, the President of the Employment Tribunals, an Advisory Committee Secretary who has led the training of Officials from other Advisory Committees, the Head of the JCIO and Senior MoJ Officials.

JACO Office Officials have met and discussed issues of mutual interest with a member of Serbian judiciary. These discussions were part of the Programme of Professional Development for the Western Balkans Leaders for the Future, funded by the Foreign and Commonwealth Office. They also met senior officials from the Zambian Commission for Investigations and with a Senior Official from the Department for Criminal Law in the Macedonia Ministry of Justice.

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 both 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 an “Easy Read” version of the JACO literature for those who might experience difficulties relating to the standard forms.

Complaints and compliments received

Under the Memorandum of Understanding agreed with the MoJ the Lord Chancellor can consider complaints about the Ombudsman’s personal conduct, with the proviso that people who wish to complain should be encouraged to approach the JACO Office to see whether there is any scope to resolve their concerns. There was an instance during the year in which someone indicated that he wished to complain about the Ombudsman, although it appeared from the correspondence that he was disputing the Ombudsman’s decision.

There have been 2 instances in which complaints have been made against a member of staff in the JACO Office. After investigation, these were not upheld.

The JACO Office is aware of instances in which the service provided fell below the level expected:

- there were 3 instances in which correspondence in which people indicated that they wished to complain about the process by which their concerns about a judicial office holder's actions appeared to "slip through the net" without being answered. In 1 of these cases a reminder also went unanswered. These errors only became identified when the complainants contacted the Office to query the position. The JACO Office apologised for the poor service provided and took steps to expedite the cases in question; and
- there was 1 instance in which the JACO Office sent a letter (on white paper), inviting a complainant to particularise his concerns. This was wrong as he had previously indicated that his visual disability meant that he could only access documents on turquoise paper and had previously complained that the JCIO had similarly sent him letters that he could not access. The JACO Office wrote to the complainant, on turquoise paper, apologising for the error and giving him the opportunity to provide information to support his complaint. It also ensured that future correspondence was on the appropriate colour paper.

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

"this is another letter to compliment you all on the efficiency and politeness of you all when dealing with my complaint."

"Thank you for sending the report and thank you for your detailed report, you raised my concerns and left no stone unturned. It speaks volumes."

"I would like to say thank you for your hard work in preparing the report and thoroughly investigating my concerns. I cannot fault your efforts in any way. Your communication and professionalism are to be praised."

Corporate Governance

Status of JACO Office

The JACO Office is an Arms Length Body, sponsored by the MoJ and funded from monies voted to the MoJ. We have regular meetings with the MoJ Sponsorship and Finance Teams to discuss budgeting issues and progress in meeting the Office's objectives. These meetings are constructive and helpful.

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 the key business targets and objectives to be met.

The JACO Office agrees its budget with the MoJ each year and reports regularly to the MoJ's Finance and Sponsorship Teams on how actual expenditure compares with the budget. The JACO Office budget was £457k in 2015/16. Outturn expenditure amounted to £416k. This is the tenth year in succession in which the JACO Office's outturn expenditure has been below that budgeted. Forecast expenditure for 2016/17 is £412k.

Staff Resources

The Ombudsman is a public appointment and, where required, a Temporary Ombudsman is engaged on a daily basis for the time spent considering specific complaints. The JACO Office has not engaged any other consultants or any Agency workers during 2015/16.

JACO Office staff are Civil Servants, engaged under MoJ terms and conditions. This includes encouraging remote working where this can be done without compromising the security of information held and the need to provide a "customer facing" organisation.

The Office comprises a Band B Head of Office; a Band B Office Manager; 5 Band C Investigating Officers (4.6 Full Time Equivalent); and one Band E Administrative Officer. With the exception of 1 member of staff recruited within 2015/16, all staff have been with the Office for at least 5 years.

The JACO Office keeps staffing levels under review. During 2015/16 it was felt necessary to recruit someone to replace an Investigating Officer who had retired in 2014. It has not recruited temporary cover in respect of a member of staff who is currently on maternity leave.

The average days lost to sickness amongst JACO Office staff was 4.1 days. The JACO Office manages sick absence in accordance with MoJ policy, including the MoJ's new Attendance Managing Policies, introduced for Arms Length Bodies from February 2016.

There have been no compensation or exit payments made to staff in 2015/16.

Longer term expenditure trends

The JACO Office will provide input to MoJ discussions about expenditure during the Spending Review period (2016/17 until 2019/20) as well as discussing issues arising from the MoJ's desire to reduce its Whitehall footprint.

89% of the JACO Office expenditure in 2015/16 comprised staff costs. The Office keeps staffing levels under review.

It may be difficult to deliver further significant reductions in expenditure without reducing staffing levels.

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. All staff currently working in the JACO Office have undergone mandatory training and are 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, including when working remotely. There have been 2 minor breaches in 2015/16, both of which were discussed with relevant officials within MoJ.

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.

JACO Office staff are also conversant with the MoJ whistle blowing and raising concerns procedure.

20

Annexes

Annex A

2015/16 Statistics

Breakdown of complaints received

	Total number of complaints & enquiries received	Appointment related cases received	Conduct related cases received	Other enquiries received
April	54	0	34	20
May	61	0	37	24
June	76	0	50	26
July	74	1	47	26
August	74	1	51	22
September	49	0	35	14
October	57	1	36	20
November	62	0	40	22
December	53	0	41	12
January	72	1	47	24
February	76	0	56	20
March	67	0	39	28
	Number of complaints & enquiries	Appointment related cases	Conduct related cases	Other enquiries received
TOTALS	775	4	513	258

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
513	372	112	29

Breakdown of cases finalised²

	Cases dealt with at 1st level – ‘initial check’	Cases finalised at 2nd level – ‘fast track’	Cases finalised following a 3rd level ‘full review’
Appointment	0	0	3
Conduct – relating to JCIO	165	133	30
Conduct – relating to Tribunals	81	52	24
Conduct – relating to Advisory Committees	11	6	13
Total	257	191	70

There were, in addition 5 cases which the Ombudsman initially accepted for a full review but in which he subsequently decided that one was not necessary, advising the complainants accordingly.

Cases investigated, determined and finalised³

	Not upheld	Upheld and partially upheld	Total
Appointment	3 (100%)	0	3
Conduct – relating to JCIO	24 (80%)	6 (20%)	30
Conduct – relating to Tribunals	22 (92%)	2 (8%)	24
Conduct – relating to Advisory Committees	11 (85%)	2 (15%)	13

² 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.

³ 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

This complaint and two others concerned applications for appointment in the Recorder (Family and Crime) competition. The complainants practised in another jurisdiction but were eligible to apply. These candidates were supplied with a reading list prior to sitting an on-line qualifying test.

The complainants noted that historically the test had been run on a non jurisdictional basis and so felt they had an equal opportunity to get to the next short-listing stage of the selection exercise. This had been changed to jurisdiction specific testing. The complainants felt that they were at a considerable disadvantage in the test and were concerned that the reading list was too discursive, did not cover all of the questions raised in the qualifying tests, nor did it allow them to properly prepare for the test. They also felt that the JAC did not make sufficient effort to ensure that the qualifying tests were suitable for non practitioners nor did it allow non practitioners to demonstrate their “ability to acquire” the requisite skills. Additionally they complained that the second stage test was not as advertised.

The Ombudsman investigated and was content that jurisdiction specific tests had been used by the JAC in previous Recorder competitions. The issue for him was whether there was any unfairness or discrimination as alleged and whether applicants had been misinformed about the qualifying tests. He established that the JAC had complied with its duties under the Constitutional Reform Act 2005 when it ran this selection exercise and that it had dealt with the candidates’ complaints adequately:

- two senior members of the judiciary with an in-depth working knowledge of the crime and family jurisdictions were engaged to set the reading list and the marking scheme. They confirmed to the JAC that they were content that the marking scheme and reading lists were appropriate to create a level playing field and a competition based on merit. It was reasonable for the JAC to have proceeded to a practice run on this basis;
- the JAC arranged a practice run of the qualifying tests with volunteer lawyers and assessed the feedback, to ensure that the test was appropriate for candidates and took account of their feedback;
- the JAC allowed relevant professional bodies to provide input before the recruitment process started; and
- the information provided to candidates was clear and easily accessible on the JAC website, JAC staff were available to deal with any queries from candidates and the process followed was as advertised in publicity material.

The Ombudsman was therefore content that the JAC took reasonable steps to ensure that the Selection Exercise was fair. He was pleased that the JAC has been able to confirm that some candidates from outside the crime and family jurisdictions did pass both qualifying tests with sufficient merit to be invited to the final stage of the competition. He was also reassured by the JAC's statement that it would be examining feedback which it received on this competition from candidates and professional bodies; part of this feedback would obviously cover the setting of reading material for non-practitioners. For these reasons he did not uphold the complaints.

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

The Ombudsman considered a complaint that the JCIO had failed to consider evidence and wrongly dismissed a complaint on the basis that it was about judicial decision making when it was actually about a judge failing in his duty. The JCIO had also ignored the complainant's chasing emails for more than two months.

The original complaint included points that a senior Judge gave a "brief judgment", said that he had "no appeal", gave no explanation or reason for rejecting his points of law and failed in his duty to hear the matter impartially or fairly. The JCIO dismissed this complaint on the basis that it did not have the remit to investigate an allegation where there is no evidence of any misconduct. It concluded that the issues entirely related to judicial decision making. The Ombudsman was content that this decision was in accordance with the disciplinary legislation and relevant guidance, so he did not uphold this aspect of the complaint.

The complainant had emailed a link which he said proved witness intimidation; the JCIO initially stated that it could not open the link which gave the erroneous impression that the JCIO could consider the matter. After some correspondence the Senior Caseworker explained that there was no need to listen to the linked recording as it related to a matter on which the Judge had made a decision in court. Judges' decisions are outside the remit of the JCIO and the disciplinary process, therefore this matter could not be investigated and the Ombudsman did not uphold this aspect of the complaint.

The Ombudsman upheld the complaint of delay. There was a significant delay of 13 weeks in a Manager responding to the complainant's response to the rejection letter despite several reminders. This amounted to maladministration. The Head of Casework at the JCIO agreed to write to the complainant to apologise for the delay. The Ombudsman welcomed this constructive approach.

Case Study three – Judicial Complaints Investigation Office

In this case the complainant was concerned that a judge had used a derogatory phrase to describe him at a hearing. He said that he had a note from the barrister for the other side in the case which supported the allegation. The JCIO dismissed the complaint on the basis that it was vexatious. The complainant expressed concern that this meant that all further complaints about abuse and insults from the Judge would be dismissed without investigation no matter how reliable or incontrovertible the evidence; he suggested that the JCIO had acted unreasonably and demonstrated bias towards the Judiciary.

The Judge had previously conducted two hearings in the case. After each the complainant had submitted a complaint about the Judge's behaviour. The JCIO had conducted detailed investigations into each, including listening to the recordings of the hearings. These investigations had found not only that the Judge's manner could not be faulted but that the complainant had been argumentative, angry and abusive.

The Ombudsman observed that the size of the Judiciary and the role that Judges play in determining contentious disputes makes it virtually inevitable that their actions will attract complaints. Some of these will be substantiated and others may be made in the honest belief that a Judge's conduct has been at fault, even though subsequent investigations show that the complainant was mistaken. It is necessary to have a robust and effective means of considering complaints; however the complaints system must have a process for weeding out spurious complaints.

The Ombudsman appreciated that there is a danger that the JCIO might dismiss as vexatious cases in which evidence might show that the Judge's conduct was at fault. He therefore said that it was important for the JCIO to give careful consideration to the circumstances of the case before dismissing a complaint as vexatious. In this particular case he found that the JCIO's Senior Management gave careful consideration to the issues and the evidence before concluding that the complaint was vexatious; it is clearly appropriate for JCIO guidance to suggest that, in many cases, vexation can be inferred from a pattern of past complaints and the absence of a reasonable cause.

The Ombudsman found that the JCIO had followed a correct process. He did not find maladministration.

Case Study four – Tribunal President

The complainant raised a complaint with JACO that the Tribunal failed to take his complaint forward, as he was made to await the outcome of his ongoing appeal before the complaint could be investigated. He complained that, in the interim, the Investigating Judicial Office Holder (IJOH) who considered the case had allowed the Judge complained about to retire without taking any action.

The Ombudsman was very concerned that the Complainant was advised shortly after the IJOH received his complaint that consideration of his concerns would be deferred pending the appeal and that the Tribunal Judge complained about was due to retire in a month. The complaint was dismissed four months later, after the appeal had been concluded, on the basis that the Tribunal Judge no longer held a Judicial Office.

The Ombudsman did not uphold this complaint as he found that:

- it was reasonable for the IJOH to defer consideration at the point when the appeal was ongoing and that he was required to dismiss the complaint after the Tribunal Judge had retired. Nor did he find any evidence of delay or poor case management in the IJOH's actions; and
- the IJOH was required to dismiss the complaint once the Tribunal Judge complained about no longer held Judicial Office.

It was relevant that rule 120 of the Judicial Conduct (Tribunals) Rules 2014 permits IJOHs to defer consideration of complaints where there is good reason to do so. It is common practice for IJOH's to defer consideration of complaints when proceedings are ongoing and the complainant is awaiting a decision on appeal. Guidance to rule 120 states that the fact that a complaint may relate to ongoing proceedings does not prevent it being considered under these rules. Therefore a complaint will only be deferred under this rule where the IJOH considers there is good reason to do so.

In this instance the grounds of complaint against the Tribunal Judge replicated the points in an appeal that the complainant was also pursuing. The Ombudsman therefore found that it was reasonable to await the outcome of the appeal. People who complain against Judicial Office Holders often raise similar issues in an appeal which they pursue at the same time (particularly issues of bias) and it is reasonable to await the outcome of the appeal, so that the IJOH can consider any concerns expressed in the appeal judgment when deciding whether there has been any misconduct.

However, the Ombudsman was concerned that the practice of deferring consideration of complaints in if an appeal is ongoing might allow allegations of misconduct to go unexamined if the Judicial Office Holder subsequently retires. Accordingly he made a recommendation that in future, if similar circumstances arise and the IJOH holder is aware of the impending retirement of the Judge complained against, an investigation should be carried out immediately, with the proviso that any decision on the complaint might be amended to take account of relevant comments made by the higher court if it concludes its consideration of the appeal prior to the retirement of the Judge complained against.

Case Study five – Magistrates’ Advisory Committee

This case concerned a complaint against a Magistrate who was accused of using his judicial role to gain influence in a private dispute. The complainant believed that there had been an inadequate investigation by the Advisory Committee (AC) which had simply accepted the word of the Magistrate without consulting any further evidence. He also complained that the AC had not kept him updated or dealt with the substance of his complaint and had not informed him of his right to put forward reasons why part of his complaint should be considered out of time.

After careful consideration of the evidence available the Ombudsman concluded that the AC delayed matters, did not keep the complainant updated and did not give satisfactory consideration to his complaint.

Essentially the AC had conflicting accounts of what happened. The complainant said that the Magistrate had acted inappropriately on the day and the Magistrate said he had not. The Ombudsman was concerned that the AC did not seek any third party verification of what happened on the day, especially given that it was informed that there were several witnesses to the events including the complainant’s solicitor and a police officer. In the circumstances the AC should have made further enquiries. The Ombudsman was also disappointed that there was no audit trail to record the Chairman’s decisions and reasons. The Ombudsman found that this amounted to maladministration. The Ombudsman therefore, upheld this aspect of the complaint. The Ombudsman directed that the AC’s decision be set aside and the complaint be re-investigated.

The Ombudsman upheld the complaint that the complainant was not allowed the opportunity to provide exceptional reasons for delay in making his complaint. However, he did not require the AC to consider the issue afresh because it was not one that the AC could investigate as it concerned matters outside the AC’s remit.

The Ombudsman understood that the complainant did not receive the AC’s letter dismissing his complaint, but he was content that the AC responded to the complainant’s query about progress, confirming that the matter had been dismissed and apologising that the letter had failed to reach him.

Annex C

Summary of Performance against Business Plan targets

Our strategic aim 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 (99.7%)
PT 3 – when an 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 (99%)
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. 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. 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 (although there have been two minor information security breaches).</p>

Annex D**Budget Allocation and Actual Expenditure**

	Forecast	Actual
Staff costs and salaries	411,000.00	393,673.00
Office expenditure, Accommodation, IT Services, Service costs and Miscellaneous	34,570.00	21,760.00
Training	10,000.00	574.00
Travel and subsistence	1,430.00	446.00
Total expenditure	457,000.00	416,453.00

Annex E**Statistical Data 2010/2011 – 2015/2016**

Financial year	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
Cases received	470	645	810	828	952	774
Cases determined	67	73	77	63	92	70
Conduct (JCIO, Tribunal, Advisory Committee)	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	10 upheld/ partial upheld 59 not upheld
Appointment (JAC)	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	3 not upheld
Ombudsman's Time (Days per week)	2.5	2.5	3	3	3	3 days (until 25/01/16) 2 days (from 26/01/16)
Staffing	10	10 (9.4 FTE)	10 (9.4 FTE)	9 (8.4 FTE)	8 (7.5 FTE)	9 (from 05/08/15) (8 FTE)
Budget Forecast	591,000	534,000	549,000	513,000	445,000	457,000
Actual spend	539,428	457,000	546,000	504,000	401,000	416,000

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