

Annual Report 2016-17

Judicial Appointments & Conduct Ombudsman

Annual Report 2016-17

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

© Judicial Appointments and Conduct Ombudsman (2017)

The text of this document (this excludes, where present, the Royal Arms and all departmental or agency logos) may be reproduced free of charge in any format or medium provided that it is reproduced accurately and not in a misleading context.

The material must be acknowledged as Judicial Appointments and Conduct Ombudsman copyright and the document title specified. Where third party material has been identified, permission from the respective copyright holder must be sought.

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

Print ISBN 9781474144438

Web ISBN 9781474144445

ID 15061755 59686 07/17

Printed on paper containing 75% recycled fibre content minimum.

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

Contents

The Judicial Appointments and Conduct Ombudsman	4
Foreword	6
Performance	8
Complainants and Stakeholders	21
Corporate Governance	24
Annexes	27
A 2016/17 Statistics	28
B Case Studies	30
C Summary of Performance against Business Plan Target	39
D Forecast and Actual Expenditure	41
E Judicial Appointments and Conduct Ombudsman data from 2011/12 – 2016/17	42

The Judicial Appointments and Conduct Ombudsman

The Judicial Appointments and Conduct Ombudsman (JACO) is Paul Kernaghan CBE QPM. He was selected following an open competition and appointed in January 2016 by Her Majesty the Queen on the Lord Chancellor's recommendation.

The JACO Statutory Remit

The JACO 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 the Lord Chancellor and the Lord Chief Justice (or a Designated Judge acting on his behalf) may be involved later in the process as 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 'First Tier' bodies, listed above.

In judicial appointment complaints the JACO 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 JACO 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 but only for loss suffered as a result of maladministration in respect of matters that fall within his remit.

Foreword

This is my second Annual Report and the first covering a full year in which I have been the Judicial Appointments and Conduct Ombudsman. My knowledge and appreciation of the complex judicial appointments and conduct field has grown and I am grateful for the time and effort colleagues have devoted in assisting my understanding. My goal and that of my dedicated team, is a 'Second Tier' investigative process which is rigorous, taking due regard of the realities of every situation and which seeks to be both proportionate and humane in delivering timely reports.

In broad terms the role of the Judiciary is to either preside over hearings in which questions of guilt or innocence are decided, or to adjudicate on issues which can have a major impact on individuals' personal, professional and emotional lives. Thus, it should not be surprising that many seek to pursue their agendas via the Judicial Complaints processes. In many cases my role is the "end of the line" for people who believe the Courts, the Judicial Appointments Commission or the 'First Tier' investigative bodies have failed them. The advent of modern information technology, not least email, has created easily accessible means of disseminating complaints and grievances to wide ranging audiences. In 2016/17 my Office received in excess of 900 complaints and enquiries. My core objective is to respond in a sympathetic manner, highlighting where appropriate alternative means by which people can pursue concerns which fall outside my statutory remit. Equally, I am committed to assisting 'First Tier' bodies in improving their processes based on the learning derived from my investigations. My Office is no exception to that process and we seek to continuously improve our own practice, not least in how we manage requests for information made under the Freedom of Information Act 2000 and the Data Protection Act 1998.

The majority of my time as Judicial Appointments and Conduct Ombudsman is spent considering the comparatively small proportion of cases which are referred for a full investigation, as they contain issues which warrant detailed consideration. This report similarly concentrates on such cases and, in particular, the problems identified. The number of cases that have been upheld or partially upheld has increased from 10 to 18 and I have become aware of a specific issue which appeared to apply cross a number of Advisory Committees. Namely, that some complaints about the actions of Magistrates were being determined by people other than the Chairman of the relevant Advisory Committee, or a designated Deputy Chairman. That issue alone demonstrates the value of an independent Ombudsman who can see the "bigger picture" and suggest remedial measures.

I said in the foreword to my 2015/16 Annual Report, that it would be difficult to totally eradicate maladministration in respect of matters which fall within my conduct remit. I remain of that view, not least because the process is administered

by human beings, often working under great pressure in considering issues of great importance to both complainants and, indeed, Judicial Office Holders whose actions may come under scrutiny. I have borne this in mind when conducting investigations and I am pleased that overall, the incidence of maladministration remains extremely low. It is also the case that the Judicial Appointments process is at present giving rise to very few complaints. This supports my impression at the start of 2016/17, that the Judicial Appointments Commission is delivering an appointments process that is widely perceived as both fair and robust.

My Office is, like the rest of the public service, subject to resource constraints. Thus, it is pleasing to report on a year which has seen us meet our performance targets within budget. I am conscious that the continuity of staffing within the Office has played no small part in delivering such an effective and efficient service. However, I recognise that colleagues and I must constantly review our own working practices and remain ready to respond to wider initiatives which may impact on Arm's Length Bodies.

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a horizontal line that ends in a small flourish.

Paul Kernaghan CBE QPM

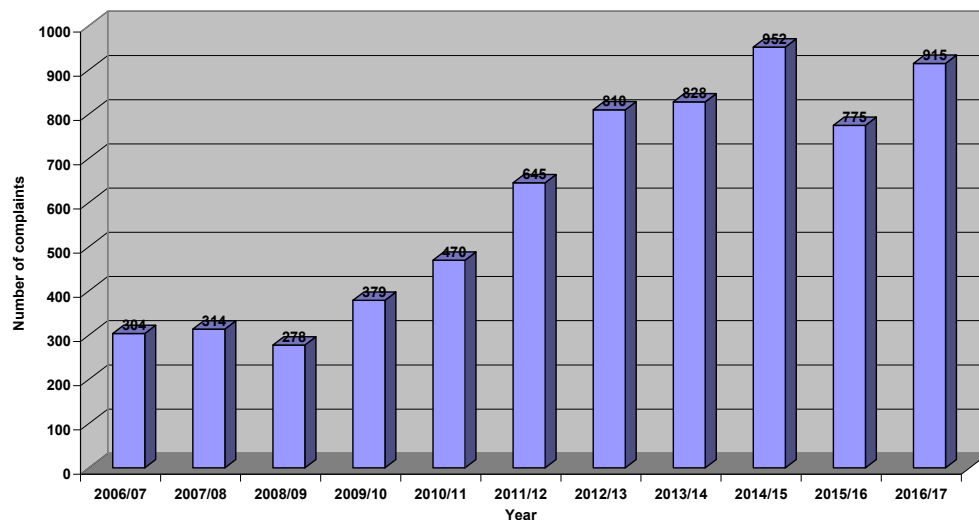
Performance

Targets

The JACO Office has achieved all its targets in the 2016/17 Business Plan (see Annex C). It remains committed to providing a high level of customer service. All correspondence and complaints are checked to assess whether they are within remit.

The total number of complaints and enquiries has increased significantly since the JACO Office was established in April 2006. The JACO Office received 915 cases in 2016/17, compared to 775 in 2015/16. The majority of complaints fell within the JACO conduct remit.

Total complaints received by the
Judicial Appointments and Conduct Ombudsman's Office
since April 2006



Initial Checks

There were 288 cases which, after consideration by a caseworker, were found to fall clearly outside the JACO's remit as they did not concern matters relating to judicial appointment or conduct. These included a significant proportion of correspondence from people (including some who have previously had complaints determined by the JACO) who frequently e-mail the JACO Office in respect of concerns which they had been informed could not be considered as they fall outside the JACO remit.

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 627 cases, liaising with complainants for more specific information about their concerns. Of those, 361 were not taken forward, usually because the complaint was inadequately particularised or dealings with the First Tier complaint body had been not concluded.

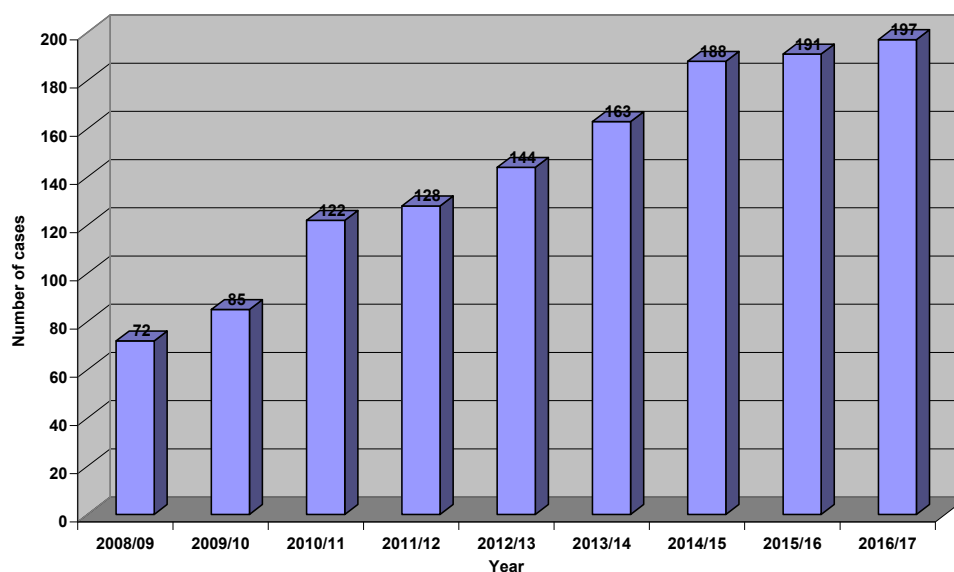
Preliminary Investigations

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 JACO to determine whether the complaint requires a "full investigation". In most cases this entails the JACO forming a view as to whether there is a prospect of his finding maladministration, although the JACO 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 JACO finding maladministration. 266 cases were considered in this way, including 197 which the JACO did not refer for further investigation. The number of cases determined at this stage has increased steadily since 2008/09.

**Fast Track - Preliminary Investigations carried out
by the Judicial Appointments and Conduct Ombudsman since 2008/09**



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 JACO to consider the complaint. The Office met this target in 99% of cases.

Outcome of Preliminary Investigations

The JACO decided that a full investigation was unnecessary in 197 cases, compared to 191 last year (an increase of 3%). The JACO wrote personally to all of them and most accepted the explanation. The JACO does consider correspondence from people who are dissatisfied with the outcome of a Preliminary Investigation. A previous Annual Report referred to instances in which the JACO decided after considering such representations that a full investigation was appropriate. There were no such cases in 2016/17.

The JACO accepted 69 of the cases where issues came within remit for further investigation; this is slightly down from 70 cases accepted for investigation in 2015/16. Of the cases referred for further investigation:

- 1 was from an applicant for Judicial Office;
- 32 related to matters considered by the JCIO;
- 28 related to matters considered by Tribunals; and
- 12 related to matters considered by Advisory Committees.¹

Full Reviews

The full review process

The JACO and his Office conduct thorough investigations into complaints which require a full review. These often require detailed consideration of large volumes of complex documentation and liaison with the complainant and the First Tier body in order to achieve a thorough, fair and balanced review.

The JACO Office therefore does not have a target for completing full investigations. It does, however, aim to ensure that people whose complaints have been passed for a full investigation are informed on a monthly basis about the position of the JACO's investigation.² It did so in 98% of the occasions when an update was due.

The investigation process includes the JACO passing draft reports in respect of cases in which a full investigation is conducted to either the Lord Chancellor

¹ The sum of these figures is more than the 69 cases referred for further investigation as it includes cases in which Judicial Conduct matters were initially considered by a Tribunal or by an Advisory Committee and the matter subsequently referred to the JCIO. In the Annex A statistics for such cases are shown as relating to the type of First Tier body that was initially responsible for considering concerns about the Judicial Office Holder's actions.

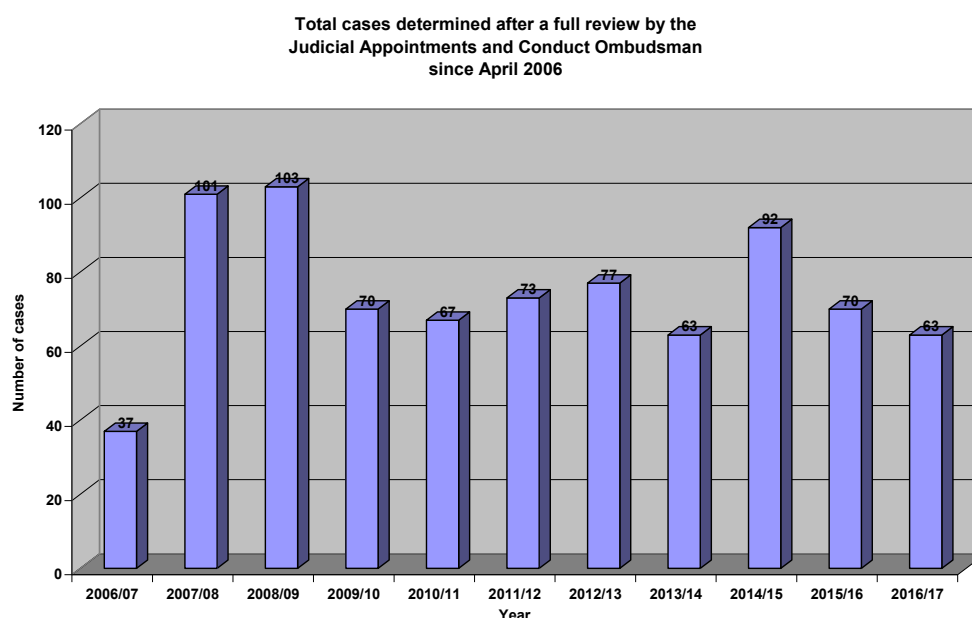
² The target is to ensure that complainants are aware of the position in the JACO investigation and so the target is to inform people during each month rather than once every four weeks or on the same date each month.

and the JAC (in respect of full investigations under the JACO appointments remit) or to the Lord Chancellor and Lord Chief Justice (in respect of the JACO Judicial Conduct remit) and taking account of comments received in finalising his views.³ There was one case concluded in 2016/17 in which the JACO altered his conclusion in the light of comments received at this stage of the process.

Outcome of cases referred for a Full Review

Numbers of complaints determined

The JACO determined 63 cases during 2016/17 (including cases carried forward from 2015/16). This is less than the number determined in previous years.



In addition, at the end of March 2017 there were 11 cases in which the JACO was awaiting a response to reports that had been referred to the Lord Chancellor and Lord Chief Justice under section 112 of the Constitutional Reform Act 2005 (the equivalent figure at the end of March 2016 was 2). This is usually the final stage in the investigation process.

Of the cases which the JACO determined following a full review:

- 3 fell within the JACO appointments remit;
- 36 concerned Judicial Conduct matters considered by the JCIO, including 3 cases in which the JCIO had considered concerns about a Coroner's actions;
- 13 concerned Judicial Conduct matters considered by Tribunals;

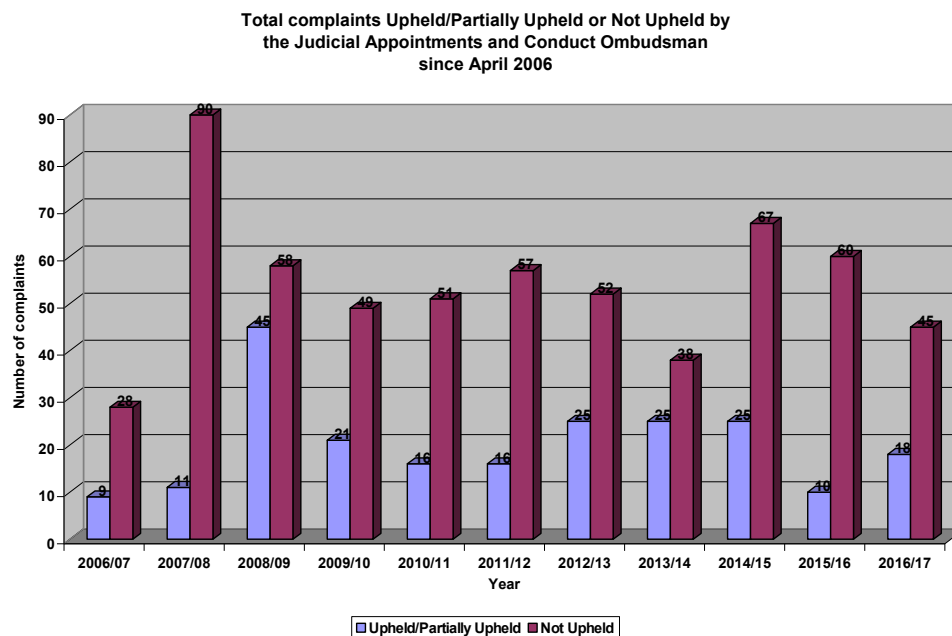
³ This is required by sections 103 and 112 of the Constitutional Reform Act 2005.

- 15 concerned Judicial Conduct matters considered by Advisory Committees;
- 7 were from Judicial Office Holders who complained about the process by which concerns about actions had been considered under the regulated disciplinary function (5 of whom had received a disciplinary sanction as a result of those investigations); and
- 2 of the conduct cases concerned the same investigation (the Judicial Office Holder and the complainant both complained to the JACO).

In addition there were 3 cases that had been referred for further investigation in which the JACO found after further investigations either that there had been no more than minor errors that could not constitute maladministration or that the matters he was being asked to consider did not relate to the Judicial Disciplinary process and therefore fell outside his remit. The JACO did not conduct a full investigation into those cases.

Complaints upheld

The JACO upheld, or partially upheld 18 cases. This is not dissimilar to the number upheld in every year since 2009/10, although it is higher than the 10 upheld in 2015/16.



The JACO:

- did not uphold any of the 3 complaints that he determined regarding the JAC's actions;

- upheld, or partially upheld 9 cases in respect of the processes which the JCIO followed;
- upheld, or partially upheld, 3 cases in respect of the processes which Tribunal Presidents or Investigating Judicial Office Holders followed; and
- upheld, or partially upheld 6 cases in respect of processes followed by Advisory Committees.

The number of conduct complaints that the JACO upheld or partially upheld has been between 10 and 25 each year since 2009/10.

The most significant development in 2016/17 was that the JACO upheld 3 cases in which he found that complaints made against Magistrates had been dismissed or rejected by a Bench Chairman or a member of HM Courts and Tribunals Service staff. This breached prescribed procedures which required that decisions to reject or dismiss complaints must be made by the Chairman (or Designated Deputy) of the relevant Advisory Committee. These cases are described in more detail in Case Study 6.

Other issues which caused the JACO to find maladministration and to uphold cases included:

- delay and poor case management, including in the process by which submissions to the Lord Chancellor and Lord Chief Justice were drafted and checked;
- concerns about information provided during the course of a complaint. This included:
 - 1 instance in which a complainant was advised that an investigation was more advanced than it actually was;
 - 1 instance in which a Judicial Office Holder was not told that the reason their case was being referred to a Disciplinary Panel was that the Lord Chancellor and Lord Chief Justice were minded to remove him from office, when the relevant First Tier body had previously recommended a lesser sanction; and
 - 1 instance in which Judicial Office Holder who had been led to believe that a matter would be resolved under the Judicial Grievance procedure was only advised that the case was being taken forward under the disciplinary arrangements when they were notified that a disciplinary sanction was being recommended.
- not considering all the issues in complaints;
- stating that the First Tier body had “nothing to add” in response to further correspondence which clearly pointed out errors in the initial dismissal letter;

- failing to make adequate enquiries before dismissing a complaint on the basis that the person complained against no longer held Judicial Office. Simple enquiries would have shown that the person held a different judicial post;
- not taking sufficiently robust steps to independently verify what happened during a hearing. Issues in this area largely related to First Tier bodies accepting comments from third parties that were either not in writing or had been provided by the Judicial Office Holder complained against and were not independently verified. There was only one instance in which the JACO found maladministration on the basis that no attempt was made to independently verify what happened during a hearing;
- dismissing a complaint on the basis that it was vexatious without considering evidence which explained why the complainant had reasonable grounds to assume that his complaint was justified;
- dismissing a complaint on the basis that it was “out of time” without considering the complainant’s explanation as to why he could not have known earlier that there might be issues regarding the Judicial Office Holder’s conduct; and
- not keeping adequate records to demonstrate why a particular decision was reached.

Other themes and issues emerging from investigations

The JACO only determined 3 cases involving the JAC. The issues which the JACO considered included:

- whether the fact that a candidate had failed to demonstrate one of the JAC’s Qualities and Abilities sufficient to conclude that the candidate should not be selected when evidence against the other Qualities and Abilities had been assessed as strong;
- whether Selection Panel members should be from the same jurisdiction as the advertised post;
- scope for abuse in the JAC’s on-line qualifying test;
- whether the JAC had disadvantaged a complainant through positive discrimination; and
- the interpretation of the JAC’s Good Character Guidance.

The number of complaints that the JACO has determined regarding the JAC’s actions, and the instance of maladministration in those investigations, has remained low for a number of years. The JACO did not uphold any complaints about the JAC and he did not express any concerns which fell short of maladministration.

There were 14 instances in which the JACO expressed concerns about correspondence from the JCIO; Tribunal Presidents; or Advisory Committees but

concluded that his concerns did not amount to maladministration. These included concerns about correspondence that:

- was incorrectly addressed or sent to a previous address;
- could have better explained the scope of the conduct investigation process, the fact that the First Tier Body could not review judicial decisions but that it might be able to consider the Judicial Office Holder's actions if the case in question had been considered by a Higher Court which had been so critical of the Judicial Office Holder's behaviour in applying the law as to raise a question of conduct;
- did not refer to the JACO's remit; and
- contained minor errors, including statements that might have given the impression that the First Tier Body had not considered the evidence that the complainant had provided.

There were 3 cases in which the JACO identified concerns about the time taken to determine cases after they have been referred to the Lord Chancellor and Lord Chief Justice for a decision as to whether a disciplinary sanction was appropriate. The JACO is aware that the regulated disciplinary function puts a personal responsibility on the Lord Chancellor and Lord Chief Justice to determine cases (although there is some scope for the Lord Chief Justice to delegate part of his responsibilities). The JACO noted that there can be a period of delay if either the Lord Chancellor and Lord Chief Justice are unavailable for significant periods, such as the Recesses.

Other areas of concern and issues that emerged during the JACO's investigations but which did not lead to a finding of maladministration included:

The JCIO

- the extent of information that the JCIO should obtain when determining complaints by reference to the outcome of investigations carried out by other bodies;
- the wording of a press notice on the JCIO website, which did not match that in a letter imposing a disciplinary sanction;
- the JCIO's handling of large volumes of correspondence received following the rejection or dismissal of a complaint which raised issues that the JCIO could not consider, some of which was confrontational. The JACO made a recommendation in respect of that issue; and
- minor delays, including delays in considering cases referred for consideration by Tribunal Presidents or Advisory Committees.

The JACO also considered complaints and other correspondence which raised issues regarding the process in assessing a complaint that a Judge had shouted; whether the JCIO should be able to rely on the transcript of a hearing rather than

listening to a recording if the complaint concerned the words that the Judge used rather than the tone in which they were spoken; and whether the JCIO laughed at a complainant during a telephone conversation.

There was 1 case in which the JACO observed that the JCIO deserve great credit for suggesting that the complainant take up their concerns with a different relevant investigating body – an action which led to the uncovering of significant malpractice, in which the Judicial Office Holder concerned was found not to be implicated.

Tribunals

- that an Investigating Judicial Office Holder did not advise a complainant whose concerns had been rejected on the basis that they were “out of time” that he had the right to identify exceptional circumstances that might warrant accepting the complaint;
- that a report into a conduct case criticised a Judicial Office Holder’s decision making (an error which was corrected when the case was passed to the JCIO); and
- delay and concerns that a complainant could have been kept better informed regarding the position in the investigation into their complaint.

There was 1 case in which the JACO considered concerns about the process followed by a Tribunal Investigating Judicial Office Holder in dismissing a case on the basis of evidence which was later shown to be incorrect (this case is discussed in more detail in the “redress” section below).

Advisory Committees

- minor concerns about delay (including 1 case in which the JACO took account of circumstances in which the actions of parties to an investigation delayed the progression of the investigation);
- delay in clarifying that an investigation was being taken forward in the absence of a formal complaint rather than on the basis of a withdrawn complaint which had not been shown to the Magistrate complained against; and
- instances in which parties to a complaint could have been kept better informed.

Other points that the JACO considered included issues regarding the scope of Advisory Committees to conduct investigations in the absence of a formal complaint; and concerns that an Advisory Committee had acted inappropriately in transferring a case to a neighbouring Advisory Committee based in a Court at which the Secretary had previously worked.

Redress

Redress in respect of upheld cases

The JACO did not uphold any complaints regarding the appointments process. Nor did he identify any issues in the JAC's processes that might warrant an apology or other redress.

Section 111 of the Constitutional Reform Act 2005 enables the JACO to set aside a determination in respect of a Judicial Conduct matter if he finds that there was maladministration that renders the original decision unreliable. In 2016/17:

- the JACO exercised that power in 4 cases. In each of these the First Tier body had agreed before the conclusion of the JACO investigation to reconsider the complaint against the Judicial Office Holder in question;
- in 1 case the First Tier body had taken steps during the course of its deliberations to remedy the effects of the maladministration which the JACO subsequently identified during his investigation;
- in 4 cases the First Tier body did conduct further investigations during the course of the JACO complaint and found that there was no evidence of misconduct. This included a case in which the JACO found that an allegation that a Judicial Office Holder had made a racist comment had not been adequately considered. The JACO was content that, in looking at the matter again, the First Tier body took appropriate and proportionate steps which showed that the Judicial Office Holder had not spoken as alleged. Consequently there was no evidence to support the imposition of a disciplinary sanction and so the original decision was not unreliable;
- there were a further 2 cases in which the JACO would have set the First Tier determination aside but subsequent assessment indicated that the allegation in question would not warrant a disciplinary sanction; and
- there was 1 case in which the JACO identified maladministration in that a First Tier body failed to consider a specific point of complaint. The First Tier Body agreed to look at the matter.

There were 15 cases in which the JACO found that an apology was appropriate (in some cases in addition to other redress). In 10 cases the relevant First Tier body had agreed to write. In 3 others the JACO found that apologies that had been provided previously were sufficient.

The Ombudsman did not recommend payment of any monetary compensation during 2016/17.

Redress in respect of cases which were not upheld

The JACO does not have any power to set aside determinations if he does not identify maladministration. In 1 case, described above, the JACO considered the process by which a Tribunal Investigating Judicial Office Holder considered

a complaint about delay in issuing a decision. In dismissing the complaint the Investigating Judicial Office Holder had relied on evidence in the Tribunal case file indicating that the decision had been issued. It transpired that the evidence was wrong. The JACO did not find maladministration as he found that the Investigating Judicial Office Holder had acted in good faith and was entitled to rely on evidence in the Tribunal file. Therefore he could not set the decision aside. However the Investigating Judicial Office Holder agreed to re-consider the matter.

There were 3 cases in which the relevant First Tier Body either apologised or indicated that it would write either apologising for matters which did not cause the JACO to find maladministration or clarifying its decision.

Preventing a recurrence of concerns identified during JCIO investigations

The JACO will consider making recommendations for systemic change in respect of concerns identified during his investigations, regardless of whether he found maladministration. Recommendations made during 2016/17 included:

- identifying a possible training need arising from the finding that it appeared to be standard practice in some Advisory Committees that complaints against Magistrates are not determined by the relevant Advisory Committee Chairman or Designated Deputy, as required by the Judicial Conduct (Magistrates) Rules 2014;
- the JACO did not uphold concerns that JCIO staff had laughed at a complainant when overhearing a telephone call. However he suggested that the JCIO remind its staff, who work in an open plan office, of the need to be circumspect when their colleagues are engaged in telephone conversations (similar advice has been provided to staff working in the JACO Office);
- there was 1 case in which the JACO identified a degree of uncertainty as to the process to be followed after it was decided that a complaint about a Tribunal member's conduct required investigation. He suggested that the training provided to Investigating Judicial Office Holders be reviewed, observing that it is important for all concerned that Tribunal Investigating Judicial Office Holders have the right support when tackling complex or difficult change complaint to complaints and disciplinary matters;
- there was 1 case that the JACO observed demonstrates that there may be instances in which First Tier Investigation bodies appropriately take the view that it is disproportionate to respond to further correspondence. He commented that the advent of e-mail makes this more likely as it enables prolific correspondents to circulate and copy large volumes of information and supporting documents to a number of recipients. He agreed that there should not be an expectation that First Tier bodies will consider or respond to all correspondence in such circumstances, especially if it has told people that it will no longer correspond. He suggested that the JCIO should consider issuing guidance, and possibly amending the automated response sent to e-mail

correspondence, to make it clear that there will be circumstances in which it will be inappropriate to respond to correspondence; and

- in 1 case the JACO noted that the JCIO routinely provide information about sources of support to “mainstream” Court Judges and Coroners whose conduct it investigates. The JACO recommended that other First Tier investigating bodies consider providing equivalent information to any Judicial Office Holders whose conduct they investigate.

In 1 case the JACO noted Advisory Committee comments that volume of work and unexpected absence of staff members both through ill health and departure from HM Courts and Tribunals Service led to delay in handling a case. He observed that this demonstrates the need for Advisory Committees to be properly resourced in order to be able to carry out their function under the Judicial Conduct (Magistrates) Rules 2014.

There were 5 cases in which the JACO would have made systemic recommendations but did not do so as steps had previously been taken to prevent a recurrence:

- the JACO did not make any recommendations arising from his concerns about poor case handling, poor communication and delay, including the time taken to produce submissions for the Lord Chancellor and Lord Chief Justice. This was because the JCIO stated that it had conducted a wholesale review of its complaint handling processes, including the processes by which submissions are drafted and checked, with a view to reducing the instances of delay and that these processes were being actively monitored. The JCIO also stated that its staff had been provided with remedial training in this area;
- the JCIO had already taken steps to improve the information provided to Judicial Office Holders in cases where the Lord Chancellor and Lord Chief Justice refer matters regarding their conduct to a Disciplinary Panel; and
- 1 Advisory Committee had already taken steps to ensure that complaints about Magistrates are referred to it, as required by the Judicial disciplinary arrangements, rather than being determined elsewhere.

Post investigation correspondence and challenges to JACO decisions

During 2016/17 the JACO responded to 25 pieces of correspondence sent in response to reports that were finalised following a full review. There were no instances in which he altered his findings or reopened an investigation in the light of this correspondence. There have been no successful legal challenges to the JACO’s decisions, either in 2016/17 or in previous years.

Analysis

The number of complaints and enquiries made to the JACO Office during 2016/17 was 18% higher than the previous year’s figure; the JACO Office noticed that it

received an increasing volume of correspondence from a small number of people submitting multiple pieces of correspondence relating to their litigation, much of which clearly falls outside the JACO remit. That aside, the number of complaints and enquiries made to the JACO Office indicates that there is a significant number of people who remain dissatisfied with aspects of the legal and judicial process and who turn to the JACO, often as a last resort. The majority of the complaints and enquiries made either fall outside the JACO remit or do not result in a complaint that the JACO can consider. The number of complaints that the JACO determined in 2016/17 was comparable to the number determined in 2015/16.

The number of complaints upheld or partially upheld during 2016/17 increased by 8 from the previous year to 18. The most significant increase was in respect of matters handled by Advisory Committees. A significant proportion of this can be attributed to the issue of people other than Advisory Committee Chairmen (or Designated Deputy Chairmen) determining complaints about Magistrates' actions under the disciplinary rules. This was not a significant issue in previous years and it may not occur in future as the JACO's concerns in this area have been flagged up as a potential training issue.

It is inevitable that the focus of this chapter (and also the case studies at Annex B) is largely on the small proportion of cases in which the JACO had concerns. The overall incidence of maladministration remains very low:

- the JACO did not identify any instances of maladministration in respect of the JAC's actions. The JAC handled approximately 2,200 applications for judicial office during 2016/17, of which less than 300 were successful; and
- in broad terms the number of complaints concerning the JCIO's actions which the JACO upheld or partially upheld equates to less than 0.4% of the JCIO's caseload. It is not possible to provide an equivalent figure for cases handled by Tribunals or Advisory Committees as the total number of complaint considered by those bodies is not available.

Complainants and Stakeholders

The JACO and his Office have maintained good working relationships with stakeholders, including the MoJ and the First Tier Bodies whose actions the JACO is required to review. In December 2016 the JACO provided the Lord Chancellor and Lord Chief Justice with a report covering his activities in the period from April to September 2016, in accordance with the Memorandum of Understanding between the JACO Office and the MoJ.

The JACO 2015/16 Annual Report listed the meetings which Paul Kernaghan undertook following his appointment as JACO. Following on from those meetings he met with the Senior President of Tribunals and attended a meeting of the Tribunal Presidents' Group. He also discussed the conduct investigation process and issues arising from individual complaints with the President of the Social Entitlement Chamber and senior JCIO officials.

The JACO has observed the assessors' briefing and the interview stage of the JAC's 2017 High Court Selection Exercise.

Assistance with submitting complaints

The JACO and the JACO Office require that complaints are submitted in writing and that complainants provide permission to disclose their complaint to the relevant First Tier Body and for that body to provide the relevant papers to the JACO Office. The JACO Office is keen to ensure that this requirement does not prevent people who may have difficulties in writing from accessing the JACO service and is aware of its responsibilities under the Equality Act 2010 in this regard. Staff in the JACO Office:

- have finalised and published an "Easy Read" version of the JACO conduct literature (including an "Easy Read" complaint form) for those who might have difficulty relating to the standard literature and forms; and
- change enable to enabled people who are unable to submit a complaint in writing to set out their concerns over the telephone and ask them to indicate whether the note recorded during the conversation is complete and accurate.

The JACO Office has also concluded work reviewing the leaflet explaining the JACO conduct remit, which has been published.

Complaints and compliments received

Under the Memorandum of Understanding agreed with the MoJ, the Lord Chancellor can consider complaints about the JACO's personal conduct (but not his decisions in respect of complaints). This is subject to 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 were no such complaints during 2016/17.

The JACO Office received a number of complaints in the year and it is aware of instances in which the service provided fell below the level expected. These need to be seen in the light of the overall JACO Office caseload, encompassing 975 enquiries and complaints received and in excess of 250 cases determined by the JACO:

- there were 12 instances in which the JACO Office failed to respond to requests for information (including three responses to requests for Internal Review of decisions) within the timeframe set out in the Freedom of Information Act 2000 or the Data Protection Act 1998;
- there was 1 complaint considered by the Information Commissioner's Office about the response to a request for a copy of a complainant's papers. The Information Commissioner's Office agreed with the JACO Office's decision in respect of the vast majority of documents on file but found that the JACO Office had acted wrongly in providing a complainant with a summary of a particular document rather than the disclosing the document itself;
- there were 6 other instances in which it was found that the service offered by the JACO Office had fallen below the expected standard in individual cases, including instances in which correspondence received had been overlooked and not actioned.

The JACO Office apologised for these shortcomings. Where appropriate it took steps to expedite consideration of the complainant's concerns and introduce measures designed at reducing the possibility for a recurrence.

There were also 3 complaints made against the JACO Office staff and service that were not upheld.

The JACO and the JACO Office also received a number of compliments from complainants during 2016/17. These included:

"Thank you so much for your prompt and efficient reply, and the extremely helpful assistance as to where my concerns should be addressed."

"I'd like to take this opportunity in thanking you and your team for taking the time to become involved, I am grateful for the professional intervention."

"Thank you. I regard the matter as closed. I thank the Ombudsman for his report. [...]. I am reassured by the outcome."

"I understand that this is just an agreement to reinvestigate the original complaint, but I am so pleased that my complaint to the Ombudsman was upheld. I would also like to thank you for your thorough investigation. Your report was clear and detailed which I am sure made a difference."

“Can I thank you for all your hard work in considering my complaint and the excellent way in which you have kept me informed during the progress of the investigation.”

The JACO Office also received an e-mail from a Tribunal Investigating Judicial Office Holder thanking the JACO for his thorough investigation. He thanked the JACO for the opportunity to explain why he had investigated the case in the way he did and acknowledged that this should have been recorded.

Corporate Governance

Status of JACO Office

The JACO Office is an Arm's Length Body, sponsored by the MoJ and funded from moneys 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. We also participate in MoJ groups discussing matters such as security and Information Assurance and the provision of services to Arm's Length Bodies. These are constructive and helpful discussions.

Financial Resources

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

The JACO Office agrees its budget with the MoJ each year. It reports regularly to the MoJ's Finance and Sponsorship Teams on how actual expenditure compares with the budget. Outturn expenditure in 2016/17 amounted to £373k, which was £39k less than the Office budget. This is the eleventh year in which the JACO Office's outturn expenditure has been less than budgeted. The outturn expenditure figure was the lowest since the JACO Office was established in 2006/07.

The JACO Office budget for 2017/18 is £417k.

Staff Resources

The Ombudsman holds a public appointment. There have been no instances during 2016/17 in which the Lord Chancellor has appointed a Temporary Ombudsman to consider a specific case. The JACO Office has sought advice from the Government Legal Department where necessary, but has not engaged any other consultants or agency workers during 2016/17.

JACO Office staff are Civil Servants, engaged under MoJ terms and conditions and based in the MoJ Headquarters at 102 Petty France. The Office has encouraged flexible and remote working where this can be done without compromising the security of information held and the need to provide a "customer facing" organisation.

The JACO Office comprises a Band B Head of Office who is also a Senior Investigating Officer; a Band B Office Manager; 5 Band C Investigating Officers (4.6 Full Time Equivalent); and one Band E Administrative Officer. There is considerable stability within the JACO Office staffing. All staff, apart from 1 recruited during 2015/16, have been with the Office for at least 5 years.

The JACO Office keeps staffing levels under review. It did not recruit temporary cover in respect of a member of staff who was on maternity leave. The additional pressure placed on staff was reflected in an increase in the number of instances in which the service provided fell below the level expected. The JACO Office therefore concluded that it was necessary to keep the post in question.

On average the JACO Office lost less than 1 day per member of staff to sickness during 2016/17.

There have been no compensation or exit payments made to staff in 2016/17.

Longer term planning expenditure trends

The JACO Office provides input into the development of MoJ “broad brush” corporate plans and policies to the extent that they relate to issues that fall within the JACO remit and to a degree that is consistent with the status of the JACO as an independent public appointee and the JACO Office as an independent Arm’s Length Body.

The JACO Office has provided input to MoJ discussions about expenditure and will continue to do so.

Approximately 90% of the JACO Office expenditure comprised staff costs. It might therefore be difficult to deliver further significant reductions in expenditure without reducing staffing levels.

The JACO Office has also provided input into discussions arising from the MoJ’s desire to reduce its Whitehall footprint and to upgrade its IT. This may entail greater use of flexible working to make better use of existing Office space, taking account of the need to continue to provide a “customer facing” organisation.

Training and Development

Staff in the JACO Office are trained to carry out their respective duties and have a high level of complaints investigation experience. The JACO Office aims to ensure that all staff are qualified to level 7 BTEC Advanced Professional Award in Complaints Handling and Investigations.

Information Assurance

The JACO Office holds a range of personal information, which includes data relating to complainants, First Tier complaint investigations and Judicial Office Holders whose actions were considered by First Tier Bodies. The need to ensure the security of this information remains a key priority for the JACO Office staff.

Staff from the JACO Office attend discussions at which Senior Information Risk Owners within Arm’s Length Bodies discuss information assurance issues. All

JACO Office staff are fully aware of the need to safeguard this information and are responsible for doing so. This is particularly the case when working remotely.

Other Statutory and MOJ Departmental Requirements

The JACO Office has local procedures in place to ensure compliance with Health and Safety legislation, staff security, ICT Security as well as its own local financial and risk management systems. Where appropriate these follow the relevant MoJ arrangements.

The JACO Office endeavours to respond appropriately to requests for information under the Freedom of Information Act 2000 and the Data Protection Act 1998. Considering such requests can be time consuming and the need to devote resources to doing so has, on occasion, delayed the investigation into complaints. There have also been instances in which the JACO has not met with some of the requirements in the Freedom of Information Act 2000 or the Data Protection Act 1998. These are covered in the discussion under “Complainants and Stakeholders”.

The JACO Office remains committed to disclosing whatever it can, in line with legislation. The JACO Office is also taking steps to ensure that it is prepared for the implementation of the European Union General Data Protection Regulation in May 2018.

Annexes

Annex A

2016/17 Statistics

Breakdown of complaints received

	Total number of complaints & enquiries received	Conduct related cases received	Other enquiries received
April	79	50	29
May	72	54	18
June	70	48	22
July	66	50	16
August	70	49	21
September	71	47	24
October	79	60	19
November	81	60	21
December	72	51	21
January	81	41	40
February	86	54	32
March	88	60	28
TOTALS	Number of complaints & enquiries	Conduct related cases	Other enquiries received
	915	624	291

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
624	398	194	32

Breakdown of cases finalised⁴

	Cases dealt with at 1st level – ‘initial check’	Cases finalised at 2nd level – ‘fast track’	Cases finalised following a 3rd level ‘full Investigation’
Appointment	0	0	3
Conduct – relating to JCIO ⁵	224	129	32
Conduct – relating to Tribunals	114	62	15
Conduct – relating to Advisory Committees	23	6	13
Total	361	197	63

69 of the cases received during 2016/17 were referred for a full investigation. This included 3 cases in which the JACO subsequently decided that one was not necessary or that the concerns raised fell outside his remit. He advised the complainants accordingly.

Cases investigated, determined and finalised

	Not upheld	Upheld and partially upheld	Total
Appointment	3 (100%)	–	3
Conduct – relating solely to JCIO	24 (75%)	8 (25%)	32
Conduct – relating solely to Tribunals	11 (85%)	2 (15%)	13
Conduct – relating solely to Advisory Committees	5 (45%)	6 (55%)	11
Conduct – relating to Tribunals and JCIO	1 (50%)	1 (50%)	2
Conduct – relating to Advisory Committees and JCIO	1 (50%)	1 (50%)	2

⁴ The number of cases received will not correlate with the number of cases finalised as some cases finalised during 2016/17 will have been received in previous years, and finalised this year, and similarly ongoing cases as at 31/3/16 have been carried into the next year, and will be finalised in the next year.

⁵ For the purposes of this table a case is allocated according to the type of First Tier Body which initially considered issues under the regulated disciplinary process. For example a case initially considered by a Tribunal President and then referred to the JCIO to ask the Lord Chancellor and Lord Chief Justice to consider whether a disciplinary sanction was appropriate would be classed as a Tribunal case.

Annex B

Case Studies

The purpose of the Case Studies is to provide a brief summary of the type of complaints in which the Ombudsman conducts a full investigation and to illustrate his approach in determining whether there was maladministration.

The Case Studies are extracts from finalised investigations, highlighting only the points of interest and are not reflective of all matters complained about.

To ensure anonymity, “he” has been used in lieu of “he/she” in the Case Studies (and throughout this report).

Appointments:

Case Study 1 – JCIO

The complainant was a Judge whose actions had been investigated by the JCIO following a complaint from one of the parties in a Civil claim. The points which the JCIO had considered included whether the Judge had been rude during the hearing and whether his decision included inflammatory or discriminatory remarks. The JCIO dismissed the complaint after listening to a recording of the hearing and considering a transcript of the judgment.

The Judge raised concerns that the JCIO had overstepped its remit when it sought to investigate comments he had made in a written judgment and his 'tone of voice' in court. He complained that the JCIO was not being fair when assessing the unsupported allegations which had been made against him. He also complained that the JCIO had made a number of errors during its investigation which had caused distress and delayed the conclusion of the case.

The JACO was concerned that a number of errors had been made during the investigation. For example, the JCIO initially identified the wrong Judge, did not respond to correspondence in a timely manner and there was confusion in correspondence which led to a misunderstanding as to the scope of the JCIO investigation. The JACO upheld the complaint on these issues.

Of equal importance was whether the JCIO had overstepped its disciplinary remit. The JACO concluded that it had not and that:

- the investigation had been fair and balanced (even if this had not been communicated very well);
- the JCIO was acting within its remit when it considered whether a judgment contained inflammatory or inappropriate remarks which might amount to misconduct;
- the JCIO did not attempt to question the merits of the judicial decision and did not consider remarks in the judgement which purely related to the Judge's consideration of the evidence or his findings about the actions or testimony of the claimant; and
- the JCIO was also acting within its remit when it listened to part of the hearing to consider allegations that the Judge had used inappropriate language. As part of this review of the recording the JCIO took account of all factors including the tone of voice used by the Judge.

The JACO was content that a full and proper investigation had taken place but identified some administrative errors. The JCIO apologised to the Judge for the failings that the JACO identified.

Conduct:**Case Study 2 – JCIO**

This case concerns the JCIO's handling of allegations that a Judge had shouted during a small claims hearing.

The complainant's initial concerns included that both parties had had to endure "rudeness, abuse and threats" from the Judge, who had not allowed either side to present their case properly and had demonstrated bias by discussing an unrelated matter when the complainant was trying to speak. The concerns also included that the Judge had raised his voice and been loud, threatening and abusive. After obtaining more information from the complainant the JCIO dismissed his concerns on the basis that they were about judicial decisions or case management and that concerns about the Judge's behaviour were either insufficiently particularised or would not warrant a disciplinary sanction even if true.

In response the complainant disputed the JCIO's conclusion that shouting, threatening people and being abusive constituted judicial case management. The JCIO noted that the complainant had now alleged that the Judge had shouted. It told the complainant that unnecessary shouting might constitute misconduct and agreed to listen to the recording of the hearing. Having done so the JCIO determined that the Judge had spoken firmly and raised his voice but had done so in the context of case management. It concluded that there was no evidence that the Judge had shouted or had been rude or threatening. In subsequent correspondence the complainant asked the JCIO to provide a definition of "raised voice" and "shouting". The JCIO explained to the complainant that a raised voice meant that the Judge was speaking loudly. The concerns expressed to the JACO included that the JCIO had not defined what was meant by shouting.

The JACO was content that the JCIO had properly listened to the recording and based its conclusions on the contents of the recording. He also noted that the dictionary definition of shouting included speaking loudly, which was what the JCIO had observed. However the JACO found that the question for the JCIO was not, in itself, whether the Judge had shouted but whether, in doing so, his actions raised a question of misconduct. The JACO was satisfied that the JCIO treats each case on its merits and that it had followed an appropriate process in considering the complaint.

Case Study 3 – Tribunal

This complaint followed a case in which the Tribunal Judge made an interim order in June 2015 setting out a notice of provisional decision increasing the complainant's maintenance liability unless he provided details of income and capital in 4 months. The complainant requested a Statement of Reasons (SoR) as he wished to appeal the Order.

The complainant told the JACO that the Investigating Judicial Office Holder had failed to consider three issues. These were that the Tribunal Judge:

- had belittled the complainant's anxiety attacks and made callous and derogatory comments about the complainant in his judgment;
- had constantly referred to the complainant by his ex-wife's maiden name, despite being asked not to; and
- had not issued a SoR.

The complainant was advised that the JACO could not consider any issues relating to the first two points as he had not previously raised them with a Tribunal Investigating Judicial Office Holder.

The JACO has seen instances in which judicial delay can lead to the imposition of a disciplinary sanction and he is aware that concerns about judicial delay are not generally considered if the delay in question is three months or less. In this instance the complainant first requested a SoR in June 2015 and repeated the request on a number of occasions before complaining in January and February 2016 that one had not been provided. The Investigating Judicial Office Holder dismissed the complaint on the basis that the matter concerned a Judicial decision and did not raise a question of misconduct.

The JACO was content that the Investigating Judicial Office Holder followed an appropriate process in considering the matter. This was because the investigation showed that the reason why a SoR was not provided was because the Tribunal Judge had taken a decision not to (because the request had been made outside the time limits in the Tribunal Procedural Rules). This meant that the issue in dispute was why the Tribunal Judge had decided not to issue a SoR rather than the delay in issuing one or determining whether one should be issued. The JACO was content that this was not an issue that could be considered under the regulated disciplinary function. He was therefore content that the decision to dismiss the complaint was consistent with the legislation and guidance.

Case Study 4 – Tribunal

In this case the JACO considered the process by which an Investigating Judicial Office Holder had considered a wide ranging complaint which included allegations that a Tribunal member had failed to declare a conflict of interest when considering the case and had delayed responding to the complainant's October 2015 request for a reconsideration of the Tribunal decision.

The first allegation was that the Tribunal Judge had been a partner at a firm which the other party to the case had used. It appears that the complainant had based an application for recusal on this information, which was rejected, and that he subsequently detailed how the various parties were based close together. In considering this issue the Investigating Judicial Office Holder referred to the Judge's comments on the recusal application that he had not worked for the lawyers in question for two years; that he was previously unaware of any link between the lawyers' firm and the other party in the case; and that the only instructions from the other party (and predecessor organisations) were in respect of matters which fell outside the Tribunal Judge's area of expertise. The JACO was content that the investigation had followed an appropriate process, considering all information that the complainant had provided, and that the conclusion that the matter did not raise a question of misconduct was consistent with advice issued by the Judges' Council in the Guide for Judicial Conduct regarding the circumstances in which Judges should recuse themselves from considering cases.

The complaint about delay in issuing a judgment was rejected on the basis of evidence in the Tribunal file indicating that a decision had been issued in November 2015. The complainant argued to the JACO that this was incorrect and that he had still not received a response at the point that he complained to the JACO in March 2016. The Tribunal's enquiries during the JACO investigation showed that the information on the file was indeed incorrect and a decision was sent in August 2016. On balance the JACO did not find maladministration as he considered that the Investigating Judicial Office Holder was entitled to rely on evidence on the Tribunal's file and he would have had no reason to doubt its accuracy. The JACO could not therefore set aside any aspect of the Investigating Judicial Office Holder's determination. However the Investigating Judicial Office Holder agreed to reconsider the issue of whether the delay in issuing a decision constituted misconduct.

Case Study 5 – Advisory Committee

The complainant had made a wide ranging complaint to an Advisory Committee, including allegations that the Panel Chairman had been rude and shouted at him during the hearing. The complainant had previously raised concerns directly with the Magistrates' Court which had been rejected by an Official, who had obtained comments from the Legal Adviser at the hearing.

The Investigating Official at the Magistrates' Court provided the Advisory Committee with a copy of its rejection letter to the complainant which included the Legal Advisor's view on his concerns. The Advisory Committee also sought comments from the Panel Chairman who, in turn, obtained comments from one of the "Wingers". The Panel Chairman's response incorporated the Winger's observations on the complaint. The Advisory Committee considered the evidence, including the comments from the Legal Advisor, Panel Chairman and the Winger before dismissing the complaint under Rule 32(b) on the basis that it concerned judicial decision making or judicial case management and raised no question of misconduct.

The JACO was satisfied that the assessment that most of the allegations concerned judicial decision making and judicial case management and did not raise a question of misconduct was consistent with legislation and guidance, however, he was concerned that the Advisory Committee took account of evidence it had not seen in determining allegations regarding the Panel Chair's behaviour during the hearing:

- it accepted the Legal Advisor's comments, which had been obtained during the course of the complaint to the Magistrates' Court without having seen them; and
- it accepted the Winger's comments as reported by the Panel Chair. It would have been better to have contacted the Winger directly to avoid the perception that one person's evidence might be influenced by the fact it was seen by a party to the complaint.

The JACO found that this amounted to maladministration and rendered the decision unsafe. He would have recommended that the Advisory Committee re-open the case and obtain comments directly from the Legal Advisor and the Winger. However it had already done so during the course of the JACO investigation and had decided that there was no evidence to support the complaint and that it fell to be dismissed under Rule 32(e) on the basis that it was without substance. The JACO cannot review the merits of the decision and was satisfied that proportionate enquiries had been made and an appropriate process followed as a result.

The JACO appreciates that it is not unusual for complainants to contact Magistrates' Courts directly with their concerns and the concerns should be forwarded to the Advisory Committee if they include allegations of judicial misconduct. The Advisory Committee told the JACO that this is their usual procedure, although it did not happen on this occasion. In this instance, it is possible that the complainant had informed the Magistrates' Court that he had complained directly to the Advisory Committee but we do not know. The JACO would have recommended that the Advisory Committee took steps to minimise the risk of this occurring in future complaint but it had already done so.

Case Study 6 – Advisory Committee

This year the JACO has determined 3 complaints in which it appeared that complaints were determined under the Judicial Conduct (Magistrates) Rules 2014 by someone other than the Advisory Committee Chairman or designated Deputy Chairman.

In 2 instances the complaints to the Advisory Committee were not referred to the Chairman of the Advisory Committee and were dismissed by the Deputy Secretary:

- in the first case, the complaint concerned allegations of bribery against unnamed Magistrates following a request for an adjournment due to his ill health. The case was not adjourned but was dismissed. The complaint to the Advisory Committee was dismissed under Rule 32(b) on the basis that it concerned judicial case management or judicial decision making and raised no question of misconduct. This in itself does not amount to maladministration. However, the fact that the decision was made by the Deputy Secretary to the Advisory Committee does; and
- in the second case, the Secretary to the Advisory Committee delegated the investigation to the Deputy Justices' Clerk who sought comments from the Legal Advisor, the Panel Chair and the two Wingers before dismissing the complaint. A subsequent request for a review by the complainant was dealt with by the Justices' Clerk who supported the decision to dismiss the complaint.

Although the Chairman can designate a Deputy to act on his or her behalf, there cannot be delegation to a Secretary or Deputy Secretary to an Advisory Committee as they are not members of that committee. The failure to follow the process in both of these complaints amounted to maladministration and rendered the decisions unsafe. The Chairman of the respective Advisory Committee's agreed to re-open the complaints and examine the issues again. However, for the avoidance of doubt the JACO formally set the decision aside using powers under Section 111(5) of the Constitutional Reform Act 2005.

The JACO was also concerned that the Advisory Committee in one of the complaints did not routinely refer complaints about judicial conduct to the Chairman or designated deputy. The JACO recommended that the JCIO, who oversee the training for all First Tier complaint bodies, look into the possibility of running refresher training for officials involved in supporting the Advisory Committee in dealing with complaints made under the Rules.

In the third complaint, although the Chairman of the Advisory Committee had seen the complaint and comments from the Legal Advisor, he was not minded, at that point, to dismiss it under the Rules. He decided that the matter should be referred to the Bench Chairman to consider any pastoral or training issues pursuant to Rule 25. This was done despite contrary advice from the Secretary that Rule 24 requires that the Bench Chairman could only be involved once the Advisory Committee had decided there was no allegation of misconduct. Nonetheless the Bench Chairman explored the complaint with the Magistrate concerned before concluding there were no pastoral or training needs. The complaint was then dismissed under Rule 32(b). The JACO was concerned that:

- the specific requirements of Rule 25 were not adhered to when referring the matter to the Bench Chairman. Rule 24 requires the Chairman of the Advisory Committee (or a designated deputy) to decide whether a complaint raises a question of misconduct and whether they should be dismissed under the provisions of Rule 32 and if so, referred to a Conduct Panel or to the Bench Chairman to deal with pastorally. At the time the complaint was referred to the Bench Chairman, the Chairman of the Advisory Committee had not decided whether there was an issue of misconduct; and
- the decision to dismiss the complaint was based, at least in part, on the enquiries made by the Bench Chairman.

The JACO was not satisfied that the Advisory Committee had followed an appropriate process in accordance with the Rules. He found that this amounted to maladministration and rendered the decision unsafe. The Advisory Committee agreed to re-open the investigation but, again, he formally set the decision aside using powers under Section 111(5) of the Constitutional Reform Act 2005.

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 (99%)
PT 2 – to deal with 90% of all correspondence received within 15 working days of receipt.	Achieved (97%)
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

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

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

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

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

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

All Achieved

Our third business objective is to deliver our business in the most cost effective and efficient manner, and to operate efficiently. Our Key Performance Indicators are:-

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

Achieved

Annex D**Forecast and Actual Expenditure**

	Forecast	Actual
Staff costs and salaries	381,000	367,956
Office expenditure, Accommodation, IT Services, Service costs and Miscellaneous	26,400	4,465
Training	4,100	1,000
Travel and subsistence	500	–
Total expenditure	412,000	373,421

Annex E

Statistical Data 2011/2012 – 2016/2017

Financial year	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17
Cases determined	73	77	63	92	70	63
Conduct (JCIO, Tribunal, Advisory Committee)	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	18 upheld/ partial upheld 42 not upheld
Appointment (JAC)	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	3 not upheld
Ombudsman's Time (Days per week)	2.5	3	3	3	3 days (until 25/01/16) 2 days (wef 26/01/16)	2
Staffing	10 (9.4 FTE)	10 (9.4 FTE)	9 (8.4 FTE)	8 (7.5 FTE)	9 (wef 05/08/15) (8 FTE)	9 (8 FTE)
Budget Forecast	534,000	549,000	513,000	445,000	453,000	412,000
Actual spend	457,000	546,000	504,000	401,000	413,000	373,421

ISBN 978-1-4741-4443-8



9 781474 144438