

# Annual Report 2018-19

Judicial Appointments & Conduct Ombudsman

## **Annual Report 2018-19**

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



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# 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, as a candidate for selection or as someone selected for Judicial Appointment, by maladministration in the way in which their application for appointment, and/or subsequent complaint was handled; and

### *Judicial Conduct and Discipline*

- concerns raised by “interested parties” (i.e. a complainant, or a Judicial Office Holder – or former 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 only they can impose a sanction on a Judicial Office Holder.

In this context a person is treated as being a Judicial Office Holder, or applying for Judicial Office, if the Office in question is listed as such in the Constitutional Reform Act 2005.

The JACO remit is often referred to as a “Second-Tier” investigation function, reviewing steps taken by “First-Tier” Bodies, listed above.

The JACO generally requires that people have concluded their dealings with the First-Tier Bodies before he will consider a Second-Tier complaint.

*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 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 for loss suffered as a result of maladministration.

# Foreword

This is my fourth Annual Report and I feel it is appropriate to initially review my activity during 2018/19 against my comments in last year's report. I am pleased that liaison between my staff and their colleagues in the offices of the Lord Chancellor and Lord Chief Justice, in particular, has improved the speed with which responses are received to my draft reports.

Last year I commented that "I remain of the view that it would be difficult to totally eradicate maladministration as these are processes run by human beings, often under great pressure and subject to resource constraints, and that things can go wrong. I am also committed to assisting "First-Tier" Bodies in improving their processes, based on learning derived from my investigations." The JCIO suffered from staff shortages but as the year progressed that problem eased and by the year end, I was happy to note that delay arising from a lack of staff was no longer a major consideration. The provision and dissemination of 'learning' can be a sensitive subject at times. It is not the role of my office to tell others how to carry out their functions but I remain firmly of the view that my remit includes the ability to suggest or recommend approaches, which are intended to improve the complaints processes for all concerned.

My role is to consider complaints of maladministration in the Judicial Conduct investigation process (including allegations that those considering matters under the Judicial Conduct arrangements have not followed the prescribed legislation and guidance) and from applicants for Judicial Office. Maladministration implies some form of process failure leading to an adverse effect. I appreciate that a finding of maladministration will be taken very seriously by those involved and do not make such a finding lightly. I have previously expressed the view that my aim is to provide a Second-Tier investigation function that is rigorous, proportionate and humane. To that end I will always seek copies of relevant documents in respect of matters considered by the First-Tier Bodies complained against and give them the opportunity to comment in respect of matters which might lead to a maladministration finding or other criticism. I am very grateful to staff in all First-Tier Bodies complained against for their commitment in responding to queries and investigations arising from complaints made to me.

Most of my work relates to issues of Judicial Conduct and I was concerned that the incidence of maladministration had increased from 8 cases in 2017/18 to 24 in 2018/19. However, this needs to be seen in context:

- The overall incidence of maladministration in the Judicial Conduct investigation process remains very low. The number of cases which I upheld, or partially upheld, equates to 9% of the cases which I determined. In addition, the number of JCIO cases in which I found maladministration amounts to

less than 1% of the JCIO's caseload. This was despite the JCIO experiencing serious staffing problems for much of the year;

- maladministration can encompass a range of issues, including those which may have disadvantaged a party to the complaint but does not mean that the decision reached is unreliable. Indeed, there were only 7 cases in which I identified maladministration which caused me to set aside the First-Tier Body's decision (including 1 case in which the First-Tier Body had reconsidered the case and found that there was no misconduct before my investigation was concluded). To set this figure in context, the 6 cases in which I set aside a JCIO decision constitutes less than 0.3% of the JCIO's caseload; and
- I cannot express a view as to whether a Judicial Office Holder's actions amount to misconduct as my decisions only reflect my assessment of the First-Tier investigation process. Even in the few cases in which I set aside a determination I am simply requiring that the matter in question is reconsidered.

I have also considered 10 cases concerning the Judicial Appointments process. I have expressed concerns in a few cases but am pleased that there have been no instances in which I have found actual maladministration.

I have considered a number of pieces of correspondence in response to my decisions and there have been 4 applications for Judicial Review considered by the Administrative Court (including 1 which had not been determined at the end of March 2019) and/or by the Court of Appeal. In 1 case I agreed to set aside my decision in respect of a case determined following a Preliminary Investigation after permission was granted for an application for Judicial Review of my decision to proceed. The case was referred for a Full Investigation and we will take account of comments made by the Judge who granted permission in considering future cases.

I agree with previously expressed views about the problems of having a cast iron definition of maladministration. Rather, when determining questions of maladministration, I take account of the wider picture, including the causes and effects of any process failure, whether the First-Tier Body acted reasonably and any steps taken to mitigate the effects of the failure. I will give First-Tier Bodies the opportunity to comment on areas of concern if there is a possibility that I will be critical or find maladministration. I do not find maladministration lightly – indeed it will clearly be inappropriate to do so each time the process has gone awry or the prescribed procedures may not have been followed to the letter. However, it is also incumbent on me to explain my decisions and, in doing so, there will be instances in which I need to both identify concerns and explain why they do not amount to maladministration (indeed this report indicates that the number of cases in which I have identified concerns which do not amount to maladministration is greater than the number of cases that I have upheld). Where appropriate, I look to share advice and observations with First-Tier Bodies with the aim of achieving a common



understanding of the processes that fall within my remit. These are crucial in providing a proportionate and humane Second-Tier investigative function.

For example, Case Study A records that I considered a number of complaints during 2018/19 in which JCIO delay was an issue. I was aware that the JCIO was experiencing significant staffing problems which seriously impacted on its ability to assess cases timeously. It was frequently taking 3 months or more for the JCIO to assess complaints and write to complainants, compared to its previously stated aim to complete these tasks within 15 working days. This is clearly not an appropriate level of service and delay at this stage might impact the scope to conduct a balanced and in-depth investigation if one were subsequently required. Delay in handling matters can have an adverse effect on those affected, even if the delay could not have had any material bearing on the outcome of the matter under consideration. Indeed, it is commonly agreed that delay can constitute maladministration, or contribute to an overall maladministration finding.

I have had no reason to question the commitment of JCIO staff. After taking account of the problems that the JCIO were facing, I took the view that, in the absence of any aggravating factors, taking up to 3 months to assess a complaint during an unavoidable period of staff shortage would not amount to maladministration if the JCIO had taken reasonable steps to warn the complainant that there might be delay. However, I also need to consider matters from the perspective of people who complain to the JCIO (and, on occasion, from that of Judicial Office Holders who were the subject of complaints). There comes a point at which the time taken becomes so excessive as to constitute maladministration, regardless of the commitment of the people handling the matter. I therefore took the view that I would conduct a Full Investigation into cases in which it appeared that it had taken more than 3 months to conduct an initial assessment and decide, on the basis of all relevant factors, whether the time taken amounts to maladministration. I was pleased to learn from the JCIO that its staffing issues were largely resolved by the end of March 2019.

I remain concerned about the length of time taken to conduct Full Investigations in my Office, which increased during 2018/19. We will continue to monitor this to ensure, as far as possible and given competing demands, that cases are managed in a timely manner. Contributory factors included that there was an increased number of cases I referred for further investigation in the first part of the year as I could not be certain, based on a Preliminary Investigation, that there was no prospect of my finding maladministration. There have also been a number of very complex and detailed investigations which have required my Office to engage in detailed correspondence with all the First-Tier Bodies concerned. I am grateful for their input.

My Office has continued to cooperate with colleagues in the wider MoJ to ensure that we both contribute to departmental objectives and benefit from corporate resources. I would close by acknowledging the support and advice we have received from the Government Legal Department.

A handwritten signature in black ink, appearing to read 'Paul Kernaghan', with a long horizontal flourish extending to the right.

**Paul Kernaghan CBE QPM**

# Performance<sup>1</sup>

## The JACO remit

In general terms the purpose of the Judicial system is to resolve disputes according to the law. In many cases there will be at least one party who is, at least in part, unhappy with the outcome, or other aspects of the case. The JACO Office is frequently contacted, both in writing and via the telephone, by people who have concerns about issues arising from cases in which they are involved. This can include allegations along the lines that, in broad terms, the outcome reached could only have been reached by the Courts either acting inappropriately or condoning inappropriate behaviour by those involved in the case. Such concerns are usually strongly felt. However, this does not mean that they raise a question of misconduct on the part of the Judicial Office Holder concerned or issues that might come within the JACO remit.

The JACO remit, as set out on page 7 and described in JACO complaint literature, is very narrow. Staff in the JACO Office try to ensure that people who make contact do not have unrealistic expectations regarding the scope of either the JACO remit or, if appropriate, that of the First-Tier Bodies which the JACO oversees. This includes stating the position when cases are first considered and, if a case proceeds to a Review or Full Investigation, restating it shortly after the JACO decides that one is required, and again if it subsequently appears that the position may have been misunderstood. Despite this there have been instances in which post report contact demonstrates that complainants retained unreasonable expectations regarding the issues that the JACO could consider and the range of possible outcomes.

## Targets

The JACO Office has, with 1 exception, achieved all the targets set out in the 2018/19 Business Plan within the allocated budget (see Annexes C and D). The exception was that the JACO Office had a target to acknowledge all new complaints and correspondence from complainants within 5 working days of receipt in 98% of cases. This was achieved in 96% of cases. The JACO Office remains committed to providing a high level of customer service.

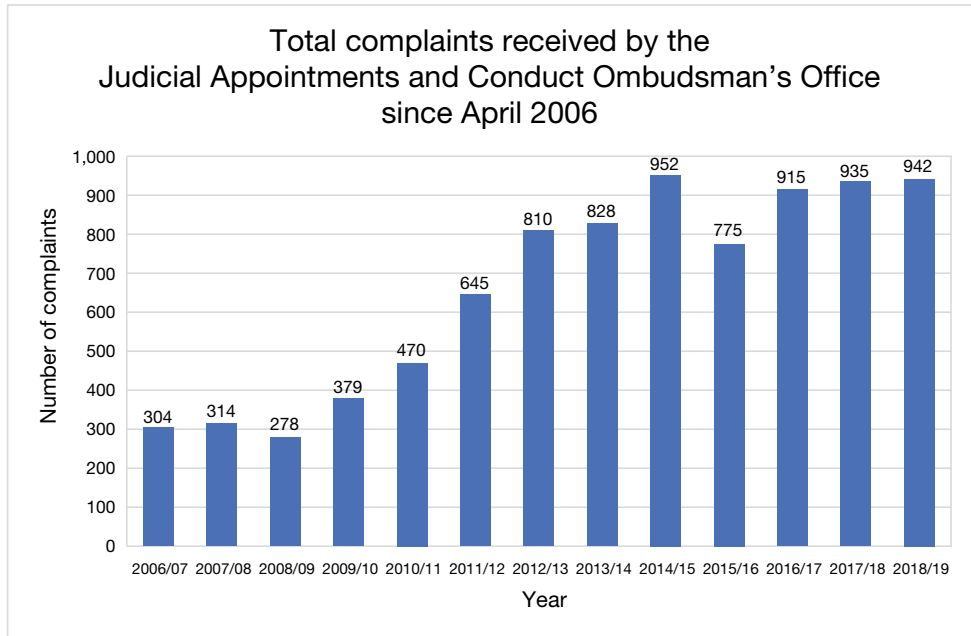
## Enquiries and complaints received

The JACO Office received more than 2,000 pieces of correspondence during 2018/19, including correspondence which raised issues which do not relate to

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<sup>1</sup> Throughout this report (including the Annex B Case Studies) those involved in cases are all referred to as “he”. This has been done simply to assist anonymity.

the JACO remit or matters that can be considered by First-Tier Bodies<sup>2</sup>. This included 942 enquiries and complaints, a slight increase on the 935 received during 2017/18. Most of these enquiries and complaints came within the JACO conduct remit rather than his appointments remit. This does not mean that the correspondence related to matters which raised a matter of judicial misconduct. For example, the JCIO’s 2017/18 Annual Report indicates that it rejected over 60% of complaints made to it on the basis that they did not raise an allegation of misconduct by a named or identifiable Judicial Office Holder. It is not unusual for the JACO to consider the process by which concerns about Judicial Office Holders’ actions are rejected on that basis and conclude that the relevant First-Tier Body had acted in accordance with the appropriate legislation and guidance.



**Initial checks**

There were 335 cases<sup>3</sup> which were found to fall clearly outside the JACO remit or were otherwise not taken forward. These included:

- a significant volume of correspondence from people who frequently contact the JACO Office (often by e-mail correspondence copied to many other recipients) in respect of concerns which clearly raise no issues that could

<sup>2</sup> It is not uncommon for some people who contact the JACO Office by e-mail to send multiple e-mails on the same business day. In calculating the volume of correspondence, we have treated all material received from the same person on the same business day as 1 piece, regardless of the number of e-mails sent.

<sup>3</sup> In this context a “case” might comprise a number of pieces of correspondence from the same person that are considered at the same time.

either come within the JACO remit or might form the basis of a complaint that a First-Tier Body could consider;

- correspondence from people who are not in a position to complain to the JACO. This may be because they have not yet submitted a complaint to the relevant First-Tier Body or because a complaint made has yet to be determined; and
- cases in which the correspondent either fails to articulate any matters relating to a First-Tier investigation or does not provide the required “permission to disclose” (the JACO Office requires complainants to provide explicit consent for their complaints to be disclosed to the First-Tier Body complained against and for the First-Tier Body to provide its papers).

Where appropriate, complainants were signposted to organisations who might be able to help, or given information about who to approach for assistance. In doing so JACO Office staff try to avoid giving unrealistic expectations regarding the scope of the First-Tier investigation process, whilst recognising that it cannot determine complaints against Judicial Office Holders.

## Preliminary Investigations

### *The Preliminary Investigation process*

Complaints that appear to come within the JACO remit and which are taken forward receive a more detailed initial evaluation to enable the JACO to determine whether they warrant a Full Investigation or Review. This is in accordance with the terms of the Constitutional Reform Act 2005 which states that the JACO must carry out a Review or Full Investigation only if 3 conditions are met. These are that the JACO considers that one is necessary; that the complaint has been made in a form that the JACO has approved; and that the complaint to him should not be rejected on the basis that it has been made “out of time”<sup>4</sup>. In most cases this part of the process entails the JACO forming a view as to whether he can rule out the possibility that the issues which the complainant raised might lead to a maladministration finding.

Full Investigations are very detailed and, as set out below, can take many months. The Preliminary Investigation process is important as it ensures that the Office’s resources are concentrated on the cases which require most detailed consideration and that complainants are advised within a reasonable timescale if there is no prospect of the JACO finding maladministration.

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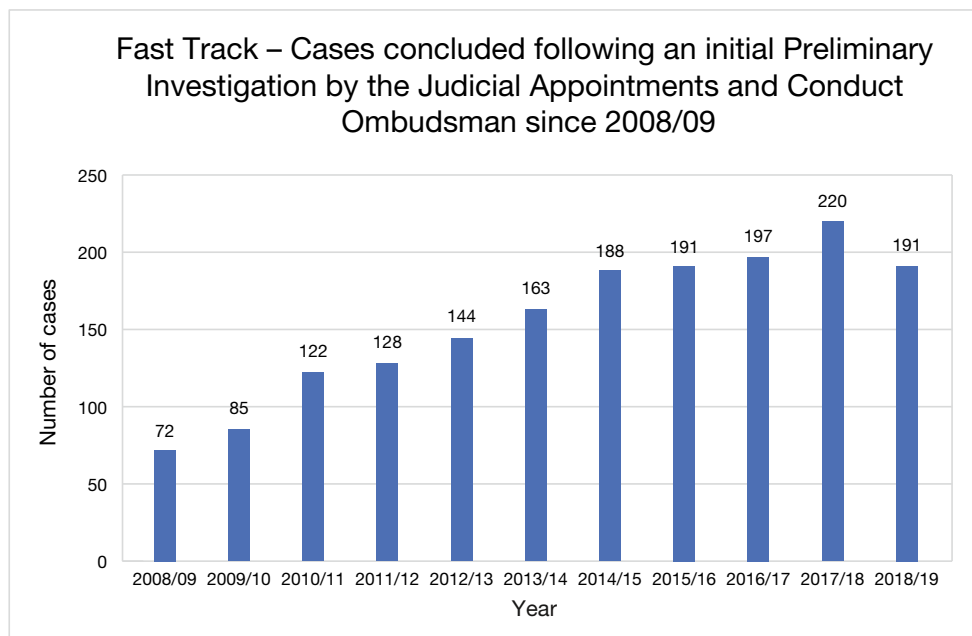
<sup>4</sup> The effect of sections 110(4) and 110(9) of the Constitutional Reform Act 2005 is that complaints to the JACO about the Judicial Conduct investigation process must be made within 28 days of the complainant being notified of the outcome of the First-Tier investigation process, although the JACO can accept complaints made outside of that timeframe if it is appropriate in all the circumstances to do so.

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

### *Outcome of Preliminary Investigations*

The JACO concluded his investigations into 191 cases at Preliminary Investigation stage without further investigation. This was approximately 13% less than the number of cases concluded at this stage in 2017/18, but broadly consistent with the 3 years prior to that. Of these:

- 127 related to matters considered by the JCIO; 56 to matters considered by Tribunal Presidents; and 8 to matters considered by Advisory Committees;
- 179 were concluded on the basis that the JACO felt that further investigation was unnecessary and 12 on the basis that the complaint to the JACO had been made out of time. No complaints were concluded on the basis that they had not been made in a form that the JACO had approved; and
- there were 20 cases in which the JACO acknowledged that there was significant delay in the JCIO's assessment of complaints but found that this could not amount to maladministration (see Case Study A).



The JACO accepted 88 of the cases in which issues appeared to come within his remit for further investigation. This was broadly the same as in 2017/18.

The JACO wrote personally to all people whose complaints were concluded at Preliminary Investigation stage. He also provided a report setting out his findings in cases where he had found that further investigation was unnecessary because there was no prospect of finding maladministration. Most people whose complaints were concluded at this stage accepted the explanation.

## Full Reviews

### *The Full Review process*

Cases which are referred for further investigation require detailed consideration, often of a large volume of complex documentation. It is important that First-Tier Bodies maintain records which fully document their consideration of what can be sensitive and difficult issues of great significance to those concerned, and that those records can be provided to the JACO Office.

Virtually all Full Investigations will entail at least one set of exchanges with the First-Tier Bodies concerned. This is an important part of the process as it provides First-Tier Bodies with the opportunity to provide their observations on the process that they followed and the JACO is very grateful to all First-Tier Bodies for responding to queries raised during the investigation process. In addition, the Full Review process requires the JACO to refer reports in draft to the Lord Chancellor and either the Lord Chief Justice (in respect of Judicial Conduct matters) or the JAC Chairman (in respect of Judicial Appointments matters) and to take account of comments made in finalising his views. There was 1 case concluded during 2018/19 in which the JACO clarified his views in response to comments made at this stage, although the changes made did not lead to a different outcome.

It has taken longer than in previous years to complete Full Investigations. Approximately 52% of the 88 investigations concluded during 2018/19 took more than 6 months and the investigations into 9 concluded cases took more than a year. This was longer than in 2017/18, in which approximately 40% of cases took more than 6 months and 5 cases took more than a year. There were also 3 outstanding cases in which investigations had been ongoing for more than 12 months at the end of March 2019<sup>5</sup>. Contributory factors include:

- an increase in the number of cases referred for Full Investigation in the first 6 months of the year. This led to a backlog of cases awaiting investigation in the second half of the year;
- that more cases were complex, involving the consideration of large volumes of material. In particular, the most complex cases are often those from Judicial Office Holders, or former Judicial Office Holders, whose actions have been considered under the regulated disciplinary function. The JACO determined

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<sup>5</sup> This is the amount of time that elapsed between the point at which the JACO decided that a case warranted a Full Investigation and the point at which he concluded that Review.

10 such cases (compared to 7 in 2017/18). Of these 5 had been subject to a disciplinary sanction;

- the length of time taken to obtain responses to draft reports. The Constitutional Reform Act 2005 requires the JACO to refer reports in draft to the Lord Chancellor and to either the Lord Chief Justice (in respect of matters within the JACO conduct remit) or the JAC Chairman (in respect of matters within the JACO appointments remit) and to take account of comments received in finalising his views (the Lord Chancellor's role in respect of cases which the JACO is not minded to uphold is generally delegated to a Senior Official within the Judicial Office). The JACO 2017/18 Annual Report recorded that the JACO normally requested a response within 3 weeks but that was not being met in the majority of cases. In 2018/19:
  - the proportion of cases in which a response was received in less than 2 months increased from approximately 30% of cases to 43% of cases;
  - a response was received in less than 3 months in approximately 60% of cases. This was broadly the same as in 2017/18;
  - there was a comparatively small number of cases in which it took significantly longer to receive a response. It took more than 6 months in 10 cases and more than 9 months in 5 cases. There was a further case in which the JACO received a response in March 2019, almost a year after draft reports were referred. The case was not finalised before the end of March 2019 as the JACO was considering the comments received; and
  - there have not been any concerns regarding time taken to receive responses to draft reports referred to the JAC Chairman.

Officials in the JACO Office have discussed this issue with their counterparts in the Lord Chancellor's Office, the Lord Chief Justice's Office and the Judicial Office. It was agreed during these discussions that a 3-week response time was unrealistic and the JACO now requests a response within 8 weeks. In addition, the JACO Office has introduced a more structured system of monitoring cases in which a response is outstanding to referred draft reports and chasing responses when cases are overdue. There have also been changes made to the process by which the JACO draft reports are considered, which has led to some improvements.

The JACO appreciates concerns about the length of time taken to conduct investigations – especially given that concern is frequently expressed about the length of time taken to conduct First-Tier investigations. In particular, 1 outcome might be that a case needs to be re-investigated by reference to peoples' recollections of events, which are likely to fade as time passes. In addition:

- there has been 1 instance in which the JACO did not receive a response to a draft report indicating that he was minded to set aside a determination for 10 months. In that period First-Tier Body had reconsidered the case; and

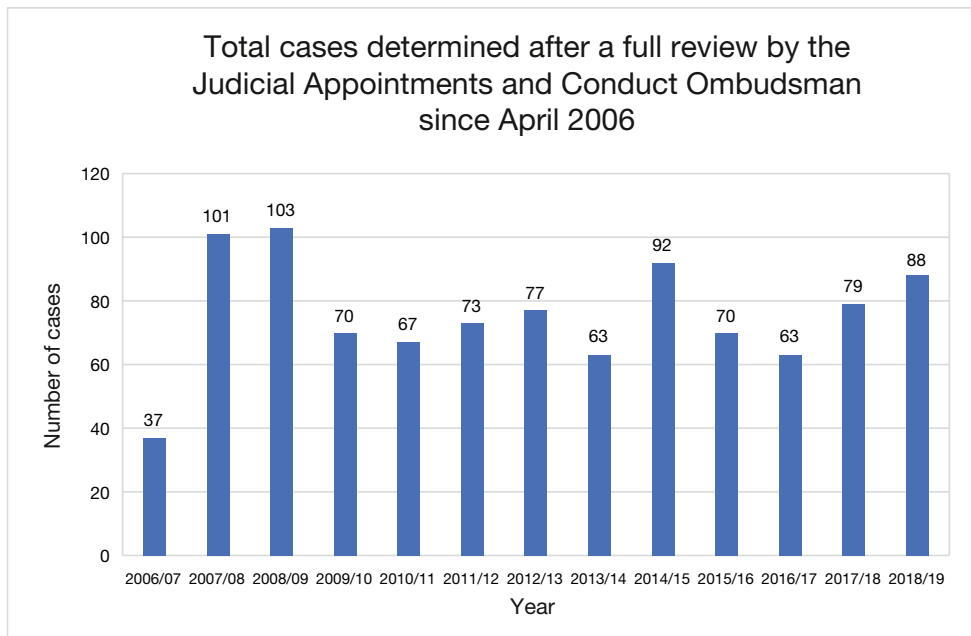


- complainants have expressed concern that the length of time taken to receive a response to draft reports calls into question the validity of the JACO investigation process and has been compared with the deadlines for people to complain to the JACO and the deadlines set out in the regulated disciplinary function.

The JACO Office seeks to keep people whose complaints have been referred for a Full Investigation informed about the position in the investigation into their complaint. This has generally been done on a monthly basis, although there have been instances in which complainants were advised that there would be no update for a particular month as it was unlikely that there would be any progress (e.g. in the month after draft reports have been referred to the Lord Chancellor and Lord Chief Justice).

#### *Number of complaints determined*

The JACO determined 88 cases during 2018/19 following a full investigation (including cases in which an investigation had been ongoing at the end of March 2018). This was an increase from 79 in 2017/18 but is broadly similar to the numbers determined in years prior to that.



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

- 9 fell within the JACO appointments remit;
- 51 concerned matters considered under the Judicial Conduct arrangements by the JCIO. This included:

- 3 cases concerning the JCIO's handling of concerns expressed about a Coroner's actions;
  - 1 case concerning the JCIO's consideration of concerns about the actions of a Tribunal President; and
  - 8 cases which involved consideration of the JCIO's handling of Judicial Conduct matters referred by Advisory Committees.
- 20 concerned matters considered under the Judicial Conduct arrangements by Tribunal Presidents;
  - 16 concerned matters considered under the Judicial Conduct arrangements by Advisory Committees. This included 8 cases in which matters were initially considered by Advisory Committees who referred matters to the JCIO as they had recommended a disciplinary sanction;
  - 10 were made by Judicial Office Holders (or former Judicial Office Holders) who asked the JACO to review the process by which concerns about their actions had been considered; and
  - 4 concerned the process by which concerns expressed about 1 member of the Judiciary by another member of the Judiciary.

In addition:

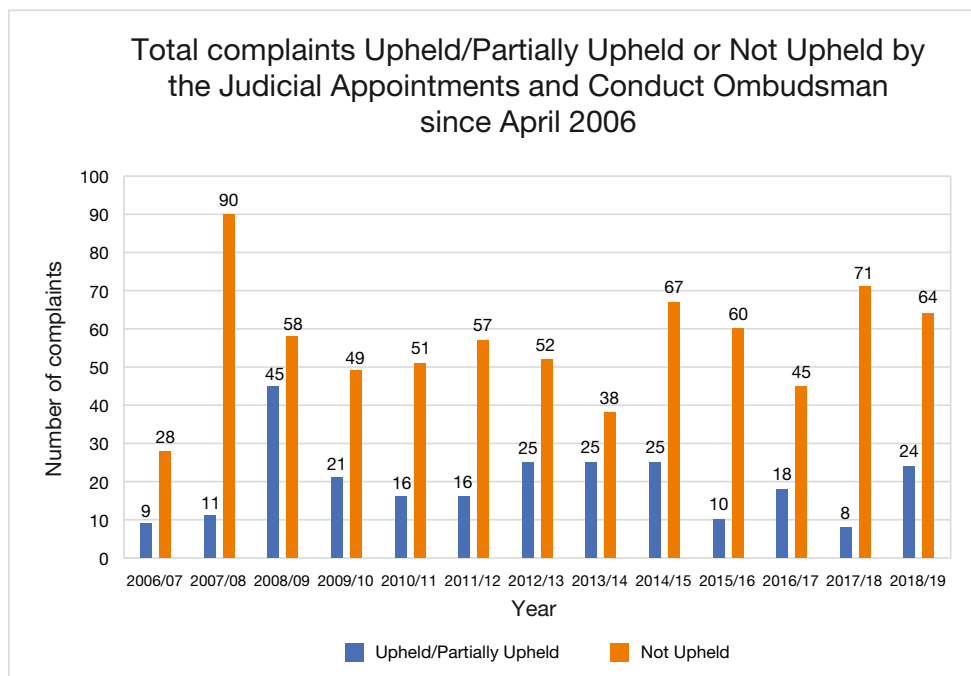
- there were 3 instances during the year in which cases referred for further investigation were concluded without a Full Review being conducted. Investigations into 2 cases (including 1 concerning the JACO Judicial Appointments remit) were concluded as it became clear at an early stage of the further investigation process that there was no prospect of the JACO finding maladministration. A further investigation was concluded as it transpired that the issue complained about was not within the JACO remit; and
- at the end of March 2019 there were 18 cases in which the JACO was awaiting responses to referred draft reports (the equivalent figure at the end of March 2018 was 13). This was usually the final stage in the JACO investigation process.

#### *Outcome of complaints determined*

The JACO determined 64 cases which he did not uphold, which amounted to 73% of the cases determined following a Full Investigation. This included all 9 cases which concerned the JAC's actions.

The JACO partially upheld 24 cases, which amounted to 27% of the cases determined following a Full Investigation. This was a broadly consistent with the number upheld in many previous years, although it was a significant increase on the 8 upheld during 2017/18. Of these cases:

- 15 were in respect of investigations conducted solely by the JCIO;
- 2 were in respect of investigations conducted solely by Tribunal Presidents (or designated Investigating Judicial Office Holders within the Tribunal);
- 3 were in respect of investigations conducted solely by Advisory Committees; and
- 4 were in respect of investigations initially conducted by Advisory Committees but which were subsequently referred to the JCIO to enable the Lord Chancellor and Lord Chief Justice to consider whether a disciplinary sanction was appropriate.



The most significant increase in the proportion of maladministration was in respect of cases considered solely by the JCIO and cases initially considered by Advisory Committees and which were subsequently referred for consideration by the JCIO. Issues which caused the JACO to find maladministration included:

- The JCIO's case management in 8 cases, as described in Case Study A;
- 5 cases in which the JACO identified a failure to follow an investigation process that was consistent with the appropriate guidance before rejecting or dismissing complaints that were assessed as not being about misconduct;
- 4 cases, apart from the cases referred to in Case Study A, in which concerns about case management, poor communication and delay by First-Tier Bodies other than the JCIO either amounted to maladministration or contributed to a finding of maladministration;

- 1 case in which a complaint was dismissed on the basis that the concerns expressed related to matters which had already been dealt with without taking any steps to ascertain exactly what issues had previously been considered. This was compounded by a failure to rectify or acknowledge the error when it was pointed out;
- concerns about the JCIO's correspondence in 2 cases;
- 1 case in which a First-Tier Body asked a complainant to provide details of the point in the hearing at which alleged misconduct occurred but listening to extracts from the recording before the complainant had responded and before the response date had passed without explaining why the process had changed;
- 1 case in which the JACO found that a First-Tier Body's decision to reject a complaint on the basis that it had been made "out of time" failed to take account of previous correspondence, which set out concerns about Judicial Office Holders' behaviour within an application to set aside a Tribunal decision;
- 1 case in which a Magistrate was not given an opportunity to comment on a Conduct Panel report recommending removal from Office and the subsequent Disciplinary Panel was advised that he had no comments; and
- 1 case in which the sum of a number of concerns about an Advisory Committee's correspondence, and its handling of "follow up" correspondence, amounted to maladministration, notwithstanding the fact that an appropriate process had been followed in determining that there was no misconduct (see Case Study E).

#### *Other themes and issues emerging from investigations*

The Constitutional Reform Act 2005 requires the JACO to make findings in respect of complaints considered following a Full Review as well as determining whether or not there was maladministration and whether the complaint should be upheld. Therefore, the JACO will look to identify any issues of concern, even if they do not amount to maladministration. Where appropriate he will make recommendations designed to improve the processes which he reviews.

#### The JACO's Judicial Appointments remit

The JACO only concluded 10 cases regarding the Judicial Appointments process, 1 of which was determined without a Full Investigation being concluded. None of these were upheld. The JACO did express concern in 6 cases. These included the issues discussed in Case Studies F and G as well as:

- appreciating that it would be frustrating for a candidate who had attended a selection day to have to wait for 4 months to learn that his application had been unsuccessful. The JACO was pleased that JAC would consider ways

to keep candidates better informed if there were likely to be similar delays in future;

- identifying instances in which the JACO felt that the JAC could have better explained decisions taken, including that Qualifying Test scores were too low to enable an application to progress and pointing out that the fact that a candidate had been assessed as meeting all the competencies was not sufficient for an application to proceed if there were felt to be enough stronger candidates; and
- 1 case in which IT problems affected a candidate seeking to take the Qualifying Test. The JACO appreciated that this, combined with difficulty in contacting the JAC to obtain clear information, would have been frustrating and felt that the JAC could have done more on the day to keep applicants informed. He noted that the JAC had developed a protocol to assess and deal with system failures and was content that the JAC made appropriate allowances for affected candidates who scored close to the cut-off and that the complainant did not fall into that category. In response to draft reports on this complaint the JAC said that it had reviewed its process for handling queries on the Qualifying Test stages, including increasing the number of staff available on their helpdesk to assist should similar problems arise in the future.

Other issues considered included whether Selection Panels took appropriate account of the ability of practitioners to receive training in respect of posts in different jurisdictions; questions as to whether the fact that Selection Panels reached different conclusions regarding the same evidence supplied to different Selection Exercises demonstrates that the process was flawed; the non-provision of feedback to candidates whose applications were rejected at sift; and how information about significant experience as a Fee Paid Judge was taken into account in assessing suitability for a salaried position.

#### The JACO Judicial Conduct remit

There were 26 cases in which the JACO expressed concerns about correspondence which did not amount to maladministration or contribute to an overall finding of maladministration. These included that correspondence:

- could have better set out its remit at the start of the process or suggested that those considering complaints appeared unaware of JCIO guidance setting out the distinction between judicial decisions and case management on the one hand and personal conduct on the other;
- could have better explained the decision made, the process followed or the information considered;
- contained errors. These included referring to the incorrect provisions under which a complaint was rejected or dismissed, or dismissing a point which the complainant had not made; and

- could have usefully explained that it could not review judicial decisions or judicial case management but that it could consider Judicial Office Holders' conduct in the light of a higher Court finding criticising the lower Court's behaviour in applying the law. It is relevant to this that one issue which the Ombudsman was asked to consider was whether First-Tier Bodies' complaint handling remit required them to consider allegations that Judicial Office Holders had breached the terms of the European Convention on Human Rights Act, the Equality Act 2010 or the Equal Treatment Benchbook in their management and determination of cases that came before them.

There were 22 cases in which the Ombudsman expressed other concerns which fell short of maladministration. These included:

- concerns about delay or poor case management in 8 non-JCIO cases (i.e. cases not covered by Case Study A). This included 1 case in which delay arose in the handling of "follow up" correspondence and 1 in which correspondence from HM Courts and Tribunals Service may have given an unrealistic expectation as to the likely time for responding to a complaint under the regulated disciplinary function;
- the management of cases after referral for consideration by the Lord Chancellor, Lord Chief Justice or Nominated Judge, including the time taken to determine such matters;
- delays after Courts had been asked to provide recordings of hearings;
- oversights which meant that First-Tier Bodies had not addressed concerns, which could not have impacted on the complaint outcome;
- First-Tier Bodies making assumptions in formulating final decisions which were arguably not supported by evidence but which did not impact on the final decision;
- the adequacy of audit trails and record keeping, including instances in which it would have been better if the First-Tier Body had kept a record of telephone conversations;
- instances in which people invited to particularise concerns were asked to do so in less than the time allowed in the relevant legislation;
- a failure to properly notify people of the JACO role and remit; and
- the recording of an unwise comment regarding a Judicial Office Holder whose actions were under consideration.

Other issues which the JACO considered, and did not reach a finding of maladministration concerned:

#### The JCIO

- the time taken to determine cases after papers had been referred to the Lord Chancellor and Lord Chief Justice (including the extent to which parties to complaints had been kept updated during such periods);
- questions as to whether the JCIO (as well as other First-Tier Bodies) either should investigate what was alleged to be clear evidence of Judges at least condoning perjury and other criminal activity (including by statutory agencies) or report such matters to the Police;
- instances where the JCIO had said that it would undertake certain investigations, such as listening to a recording of hearings, but subsequently decided that this was not necessary;
- whether the JCIO should accept complaints from people who refuse to provide a name or and/or address;
- whether the fact that the re-investigation into a case which the JCIO had agreed to reopen was conducted by the same caseworker who conducted the original enquiry was maladministrative;
- instances in which emotive language used to describe a Judicial Office Holder's actions suggested that the complaint might have been a question of misconduct but the details provided caused the JCIO to conclude that the complaints concerned judicial decisions or judicial case management;
- whether it was consistent with the appropriate legislation and guidance for the JCIO to state that it could not consider allegations that Judges had amended transcripts of a hearing, on the basis that the matter related to their case management function;
- issues regarding the JCIO's process regarding listening to recordings of hearings. These include the extent to which the JCIO needs to ask people to identify the point in short hearings at which alleged misconduct occurred; issues as to what constitutes a proportionate approach when listening to extracts of a long hearing and providing an accurate and note of findings; and
- the extent to which the wording of the "out of time" provisions might require First-Tier Bodies to investigate Judicial Conduct concerns dating back many years (see case study B).

#### Advisory Committees

- the membership of Conduct Panels;
- whether it was necessary for an Advisory Committee to invite a Magistrate to comment before a case was considered by a Conduct Panel if they had

previously responded to enquiries made to determine whether the case should be referred; and

- an allegation that a Court Legal Team Manager had pre-empted the outcome of the complaints process by responding to a complaint addressed to the relevant Advisory Committee before the Advisory Committee had received it.

#### Tribunal Presidents

- the process by which 1 Tribunal President undertook investigations on another's behalf;
- the handling of allegations that a Tribunal Judge had unilaterally altered scores against individual descriptors, including the extent to which a question of misconduct might arise only if the outcome was to materially affect the Tribunal's overall decision; and
- the fact that Tribunals, including senior Tribunal Judicial Office Holders, regularly deal with a wide range of issues, many of which fall outside of the Judicial Conduct arrangements, and how this bears on the handling of those concerns considered under the regulated disciplinary function.

#### *Redress*

The JACO did not uphold any complaints regarding the appointments process. There was 1 case in which he identified a failure of communication in respect of the JAC's correspondence regarding a request that a candidate provide information to indicate whether he was of good character. The JACO recommended that the JAC apologised for this.

Section 111 of the Constitutional Reform Act 2005 enables the JACO to set aside a determination, or part of a determination, in respect of a Judicial Conduct matter if he identifies maladministration which renders the determination unreliable. It also enables the JACO to recommend that compensation be paid in respect of a loss which relates to maladministration in the Judicial Conduct investigation process.

In 14 of the cases which the JACO upheld the maladministration related solely to the management or administration of the First-Tier investigating body and did not raise a question as to whether the determination reached might be unreliable. In the remaining 10 cases the maladministration raised issues which at least caused the JACO to consider whether the First-Tier Body's determination should be set aside. Of these:

- the JACO set aside the relevant First-Tier Body's decision, in whole or in part, in 7 cases. Of these:
  - 6 related to cases which the JCIO had determined. The other had been determined by a Tribunal President;



- the JACO was pleased to note that in 5 of these cases the First-Tier Body had either agreed to reconsider the matter in question or that it had acknowledged failures in its investigation process. In the other case the JACO noted that the First-Tier Body had re-determined the matter in question in the period between when the JACO referred draft reports to the Lord Chancellor and Lord Chief Justice in December 2017 and October 2018, when a response was received; and
  - In 2 of these cases the JACO noted issues which might limit the scope to conduct a reinvestigation.
- there were 3 cases in which found maladministration in respect of matters other than the management of the First-Tier investigation process but did not set aside the relevant determination:
- in 2 cases the JACO found that steps taken after maladministration had occurred were sufficient to mean that the maladministration identified did not make the overall determination unreliable; and
  - in 1 case subsequent comments from the First-Tier Body deliberations caused the JACO to conclude that the determination was not unreliable.
- the JACO recommended monetary compensation of £100 in respect of 1 case in which there had been serious and significant delays, including the fact that the complainant had not been updated for a period of 10 months. He was pleased that the First-Tier Body had agreed to make the payment and apologise to the complainant;
- in 15 cases the Ombudsman found that that an apology or a better explanation was appropriate. He noted that in 6 of these cases the First-Tier had previously apologised; and
- the JACO found that an apology was warranted in in respect of matters which he did not uphold in 25 cases. In 19 of these he noted that the First-Tier Body had previously apologised.

#### *Preventing a recurrence of concerns identified during JACO Reviews*

The JACO sees that a key part of his role is to assist First-Tier Bodies in identifying and addressing concerns which emerge during his investigations. He will therefore consider making recommendations for systemic changes in respect of concerns identified during his investigations, regardless of whether he found maladministration or upheld the complaint.

The JAC stated that it had learned lessons from the case described in Case Study F. In 1 other case the JACO welcomed the JAC's commitment, in the response to the complaint made to it, to consider ways to keep candidates better informed if there are likely to be delays in the appointments process.

The JACO made systemic recommendations on 12 cases which fell within his Judicial Conduct remit. These included observations about:

- the general management and resourcing of the First-Tier investigation process in 4 cases (including the use of a “brought forward” system and the need to plan for long periods of Judicial and Parliamentary recess);
- the handling of cases in which a Judicial Office Holder complained against is due to retire in 1 case (the JACO noted that there will be instances in which First-Tier Bodies need to consider complaints about Judicial Office Holders approaching retirement age and recommended that, in such circumstances, greater account should be taken of deadlines arising from forthcoming retirements whilst appreciating that steps set out in the regulated disciplinary function must be followed);
- the need in 1 case for a clear process to ensure that correspondence received in a Tribunal which raises points both about the case and the Tribunal members’ conduct is passed for consideration by the appropriate Investigating Judicial Office Holder;
- in 1 case, ensuring that witnesses asked to comment on complaints are given explicit instructions as to how they should respond. In making this recommendation the JACO noted that there were different approaches in that some First-Tier Bodies asked short open questions whereas others asked detailed questions on detailed points of complaint and that the Judicial Conduct Rules permit either approach;
- correspondence sent to parties to a complaint in 2 cases, including suggestions regarding the identification of issues for investigation in “follow up” correspondence or explaining decisions when conflicting evidence is received;
- the process by which parties to a complaint are kept updated in 3 cases (including the need to inform parties to a complaint if it is likely that consideration of a case may be delayed);
- the need to maintain adequate records of investigations conducted and decisions taken (including reference made to “precedent” cases) in 6 cases; and
- the need to ensure that Judicial Office Holders are aware of their rights under the regulated disciplinary function in 2 cases.

### **Post investigation correspondence and challenges to JACO decisions**

The JACO does consider a limited number of pieces of correspondence from people who are dissatisfied with the outcomes of their complaints. Previous Annual Reports have referred to instances in which the JACO had either changed his mind as to whether further investigation was required or set aside

determinations following Full Investigations in the light of such representations. During 2018/19 the JACO responded to:

- approximately 50 pieces of correspondence sent in response to cases concluded following a Preliminary Investigation; and
- approximately 30 pieces of correspondence sent in response to cases concluded following a full investigation.

This correspondence did not cause the JACO to set aside his decision in any cases determined during 2018/19. However, consideration of the points raised did identify minor errors in respect of 2 cases concluded following a Full Investigation.

There were 4 cases in which applications for Judicial Review involving the JACO were considered. In 2 cases (1 of which was subsequently considered by the Court of Appeal) the applications were refused; in another the Courts had not decided at the end of March 2019 whether the application would proceed to a full hearing; and in the 4th case the Administrative Court granted leave to proceed with an application for Judicial Review against a JACO decision, made during 2017/18, to conclude his investigation at Preliminary Investigation stage. In the light of legal advice, the JACO set aside his decision and agreed to refer the case for a Full Investigation, which was ongoing at the end of March 2019.

## Analysis

The volume of correspondence, and the number of enquiries and complaints, received in the JACO Office during 2018/19 was broadly the same as in the previous year. As in previous years a significant proportion of the enquiries and complaints relate to matters which the JACO could not consider. This, together with the volume and nature of complaints made to the JCIO (as covered in its previous Annual Reports) indicates that there remains a considerable number of people who are very dissatisfied with aspects of the legal and judicial systems (including those who believe strongly that Judicial Office Holders may have acted in a criminal manner or have condoned criminal or other inappropriate behaviour by those appearing before them). They may turn to the Judicial Conduct investigation process, and subsequently the JACO, possibly as a last resort, but find that the nature of their concerns mean that they cannot be considered.

The JACO determined 282 cases, following a Full or Preliminary Investigation during 2018/19. This was approximately 5% less than in 2017/18, although the number of concluded Full Investigations increased from 79 to 88. The number of cases upheld or partially upheld increased from 8 to 24. The number of cases in which the JACO set aside aspects of First-Tier Body decisions increased from 3 to 7. In reaching these conclusions the JACO was expressing his view only regarding the First-Tier investigation process. His remit does not enable him to comment on matters before the Courts or say whether a Judicial Office Holder's actions might amount to misconduct.

In terms of the numbers of cases upheld, the most significant increase in maladministration findings is in respect of matters handled by the JCIO. In addition, case study A explains that the JACO considered a number of cases relating to the JCIO's handling of cases during a period in which it was experiencing significant staffing difficulties. One effect of this was that it often took several months to conduct an initial assessment of JCIO complaints. The JACO may have found maladministration in many more cases but for steps taken by the JCIO to manage the process and alert complainants to the likelihood of delay.

The incidence of maladministration, and other concerns expressed, needs to be considered in the wider context:

- the volume of complaints received, and the volume and nature of concerns expressed, need to be seen in the light of the fact that the JAC received over 4,900 applications for Selection Exercises completed during 2018/19 and that approximately 3,900 were unsuccessful. The JACO did not find any maladministration in respect of the Judicial Appointments process;
- the number of conduct cases in which the JACO found maladministration amounts to approximately 9% of the cases concluded at Full or Preliminary Investigation stages. The proportion of cases in which the JACO set aside aspects of a First-Tier Body decisions was less than 3% of cases that the JACO determined; and
- the number of cases involving the JCIO in which the JACO found maladministration amounts to less than 1% of the JCIO's annual caseload in recent years (there are no published figures reporting the number of complaints regarding Magistrates and Tribunal members considered under the Judicial Conduct arrangements).

# Complainants and stakeholders

The JACO and his Office have maintained good working relationships with stakeholders, including the MoJ and the First-Tier Bodies whose processes the JACO reviews. The JACO recognises that there is a shared interest in improving the processes that he oversees and is keen to work towards a shared understanding of such matters. This includes sharing advice and other relevant observations where it is appropriate to do so.

In December 2018 the JACO provided the Lord Chancellor and Lord Chief Justice with a report covering his work in the 6 months from April to September 2018. This was in accordance with the Memorandum of Understanding between the JACO Office and the MoJ.

The JACO has discussed issues arising from his remit and individual cases with senior MoJ Officials. It was not possible to arrange the usual annual “trilateral” discussion between the JACO, the Lord Chancellor and the Lord Chief Justice. A trilateral discussion was scheduled for the end of April 2019.

The JACO, and officials in his Office, have:

- met the Ombudsman of Botswana and the Public Protector of South Africa to discuss matters of mutual interest. The visitors had requested the meeting as part of a programme to familiarise themselves with the operations of selected UK institutions and understand how they can better tackle specific issues in their respective jurisdictions;
- met a delegation from the United Nations Development Programme in the Republic of Kazakhstan. The delegation included the Chairman and members of the Supreme Judicial Council of Kazakhstan and representatives from the Kazakhstan President’s Administration and Ministry of Justice; and
- participated in a training day for Investigating Judicial Office Holders run by the Presidents of the Social Entitlement Chamber and the Immigration and Asylum Chamber. This was the third such training day – two others had been held during 2017/18.

## **Assistance with the complaints process**

The JACO Office receives many telephone and other enquiries, including from people who have yet to submit a First-Tier complaint and/or whose concerns may well fall to be classed as not raising a question of misconduct. Wherever appropriate JACO Office staff will both explain the JACO remit and either provide information about the scope of the First-Tier Bodies’ investigation function or direct people to where such information might be found.

The JACO and the JACO Office require that complaints are recorded in writing and that complainants provide permission to disclose their complaint to the relevant First-Tier Body and for that Body to provide the appropriate papers to the Ombudsman's Office. The JACO Office is aware of its responsibilities under the Equality Act 2010 and is keen to ensure that the requirement to have a written complaint does not prevent people who may have difficulties in writing from accessing the JACO service. It takes reasonable steps to enable people who are unable to submit a complaint in writing to set out concerns orally and, if possible, asks them to indicate whether a note recorded during the conversation is complete and accurate.

The JACO Office will consider any other requests for reasonable adjustments that would enable people to access the JACO service.

### **Complaints and compliments received**

The JACO Office received a number of complaints about the level of service provided (as opposed to concerns about the JACO's decisions). Issues which caused the JACO Office to find that the level of service provided fell below the level expected included:

- 2 instances in which the JACO Office apologised in response to correspondence expressing concern about the time being taken to conduct a lengthy investigation;
- 3 instances in which correspondence received had not been actioned. One aspect of this was that it appeared that correspondence received in the JACO's general e-mail in-box was not responded to because it was not visible to JACO Office staff. In considering these concerns it became apparent that there were a number of other pieces of correspondence which similarly could not be seen and had not been processed; and
- the JACO Office replied to 26 requests for information under the Freedom of Information Act 2000 or the Data Protection legislation. In 9 of these it took longer than specified in the relevant legislation. In 1 case the response referred to the Data Protection Act 1998 when after that legislation had been superseded by the European Union General Data Protection Regulation and the Data Protection Act 2018.

The JACO Office apologised for these shortcomings and, where appropriate, took steps to answer points in correspondence or expedite consideration of the concerns raised and introduce measures to prevent a recurrence.

The JACO Office also received correspondence expressing other concerns, including the time taken to conduct investigations in which draft reports had been referred to the Lord Chancellor and Lord Chief Justice; about the nature of the JACO investigation process (including that First-Tier Bodies complained against are given the opportunity to comment on emerging findings and draft reports

are passed to the Lord Chancellor and Lord Chief Justice but that complainants are not given the opportunity to comment on draft reports); about the extent of information provided in updates and whether, in the light of finalised reports, complainants had been appropriately advised that the issues which they really wanted investigating fell outside of the Ombudsman's remit and the Judicial Conduct arrangements; and concerns about the process by which JACO Office responded to telephone calls in which they had sought to make complaints. The JACO Office did not find that the service it provided was at fault in these regards, although it does seek, where appropriate, to learn from all concerns expressed about its service.

The JACO and the JACO Office also received compliments from complainants and others during 2018/19. These included 1 comment from someone who indicated disappointment in the outcome of his complaint but said that he had acquired some confidence in the JACO Office process and consideration. Other comments included:

*"Please thank Mr Kernaghan on my behalf and your attention and professionalism in these matters has been superb."*

*"I do thank both you and the Ombudsman for the detailed attention given to my complaint and the speed with which your office has dealt with it."*

*"While I am disappointed in the outcome I would have acquired some confidence in your process and consideration. I have no question about you maintaining the integrity of the system and must add that keeping me updated monthly did a lot in helping me process this distressing experience."*

*"Many thanks for the update, you, the JACO office [...] are as professional and efficient as ever... Please pass this on to Mr Kernaghan with our thanks."*

*"Thank you for carrying out a thorough scrutiny of the issues I raised in my complaint to the JCIO and for your perseverance in getting approval to publish the conclusions of your findings. The Ombudsman's report has gone a long way to restore my confidence in the justice system with respect to Family Courts."*

*"Thank you [...]. You have been the only person since this whole debacle began, nearly 2 years ago, who has kept me informed of progress (or lack of it)."*

## Corporate Governance

### **Status of JACO Office**

The JACO Office is an independent Arm's Length Body that is sponsored by the MoJ. It is funded from moneys voted to the MoJ, which also provides a range of support services, including accommodation, IT, telephony and some legal support services. This is in accordance with the requirements of schedule 13 of the Constitutional Reform Act 2005.

JACO Office Officials have met with the MoJ Sponsorship Teams to discuss the Office's performance. Officials also participate in MoJ groups discussing matters such as Information Assurance, security, health and safety and the provision of services and support to Arms' Length Bodies. These are useful and constructive discussions.

### **The European Union**

The JACO Office has taken steps to implement the European Union General Data Protection Regulation, which came into force from May 2018 (see below).

The JACO's remit enables him to consider issues within his remit, regardless of where the complainant lives. This will not change. It is not envisaged that the United Kingdom leaving the European Union will impact significantly on the JACO role.

### **Financial resources**

The JACO Office is committed to managing its resources effectively. It has sound and appropriate financial and governance arrangements in place, including reporting to the MoJ's Finance and Sponsorship Teams on how actual expenditure compares with the budget. These controls have enabled the key business targets to be met within the constraints of the budget agreed with the MoJ.

Outturn expenditure in 2018/19 amounted to approximately £409k, compared to a £423k budget. This was approximately £6k more than in 2017/18. It is the 13th year in which the JACO Office's outturn expenditure has been less than budgeted. It is relevant to this that:

- more than 95% of outturn expenditure was in respect of staff costs, including the Ombudsman's contracted remuneration of approximately £46k;
- the JACO Office is based in Ministry of Justice accommodation and its budget does not reflect the costs of occupying that accommodation;



- the outturn expenditure figure included approximately £14k in respect of legal fees, compared to the £1.6k budgeted. This more than accounts for the £6k increase in expenditure compared to 2017/18. The increase in legal costs was largely because the JACO Office was engaged in 2 lengthy pieces of litigation, 1 of which had not concluded by the end of March 2019;
- the JACO Office did not make any ex-gratia payments during 2018/19. In the case in which the JACO agreed to set aside his decision the JACO Office met the other party's legal costs, amounting to approximately £7k; and
- the JACO Office was aware that there were some invoices for legal assistance provided by the Government Legal Department during 2018/19 which had not been received by the end of March 2019. It is likely that there would have been a slight underspend even if invoices for these services had been received and the costs included in the 2018/19 outturn.

The JACO Office budget for 2019/20 is £445k. It has been adjusted to reflect increased employer's pension contributions which the Office will be required to meet. The unpredictable nature of the need for legal support services is the single factor most likely to mean that the JACO Office's expenditure in 2019/20 might exceed that amount.

## **Staff resources**

The Ombudsman holds a public appointment. There were no instances during 2018/19 in which the Lord Chancellor appointed a Temporary Ombudsman to consider a specific case. The JACO Office has sought assistance from the Government Legal Department where necessary but has not engaged any other consultants or agency workers during 2018/19.

JACO Office staff are Civil Servants, engaged and appraised under MoJ terms and conditions, including the MoJ's "Reward and Recognition" scheme. They are based in the MoJ headquarters at 102 Petty France. The JACO 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 (also a Senior Investigating Officer); a Band B Office Manager; 5 Band C Investigating Officers (4.6 Full Time Equivalent) and a Band E Administrative Officer. All staff have been with the Office for at least 3 years and 4 have been with the Office since its inception in 2006.

On average the JACO Office lost less than 2 days per member of staff to sickness during 2018/19.

No compensation or exit payments were made to staff during 2018/19.

## **MoJ Corporate plans and longer-term 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 within the JACO remit and to a degree that is consistent with the JACO’s status as an independent public appointee and of the JACO Office as an independent Arm’s Length Body.

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

JACO Office expenditure reduced significantly between 2013/14 and 2016/17 following a staffing restructure and the current Ombudsman’s appointment. It would be difficult to deliver further significant reductions in expenditure without reducing staffing levels, and possibly compromising the JACO service.

## **Training and development**

Staff in the JACO Office are trained to carry out their responsibilities and have a high level of complaints investigation experience. All JACO Office staff hold a level 7 BTEC Advanced Professional Award in Complaints Handling and Investigations.

## **Information Assurance and preparation for the European Union General Data Protection Regulation**

The JACO Office holds a range of personal information, some of which would be classed as sensitive personal information. It includes data relating to complainants, First-Tier Body 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. JACO Office staff participate in discussions at which Senior Information Risk Owners within Arm’s Length Bodies discuss information assurance issues.

The European Union General Data Protection Regulation, and the Data Protection Act 1998 came into force on May 2018. The JACO Office has:

- published a Privacy Notice, which is available on the JACO website;
- appointed a Data Protection Officer and identified aspects of the JACO Office practice that need further work to ensure compliance with the European Union General Data Protection Regulation and the Data Protection Act 2018;
- ensured that the legal basis under which the JACO and the JACO Office processes data (including personal data) is clear. It only processes personal data to enable the Ombudsman to carry out his statutory functions, as set down in the Constitutional Reform Act 2005 and associated responsibilities,

such as complying with requests for information under the Access legislation. In addition, the JACO Office has, since its inception, sought permission from complainants to disclose their complaint to the relevant First-Tier Bodies and for those bodies to pass the relevant file to the JACO Office;

- reviewed its assessment of the risks faced (including information assurance risks) to ensure that proportionate steps are taken to mitigate any risks and reduce the potential damage in the event of a breach. All JACO Office staff are fully aware of the need to safeguard information and the processes for doing so. This is particularly the case when working remotely; and
- worked to ensure the timeous destruction of paper records in accordance with its agreed Records Retention and Disposition Schedule after ensuring that material which might be relevant to independent inquiries into Child Sexual Abuse and Infected Blood is retained. A plan to ensure electronic records are similarly destroyed when no longer required will be implemented during 2019/20.

There have been 3 information breaches during 2018/19. These were discussed with the relevant MoJ Officials and, where appropriate, the JACO Office procedures were reviewed in the light of what had occurred.

### **Other Statutory and MoJ Departmental requirements**

The JACO Office has local procedures in place to ensure compliance with Health and Safety legislation, staff security, IT Security and its own 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 2018 and it remains committed to disclosing whatever it can, in line with legislation. Considering such requests can be time consuming and the need to devote resources to doing so has, on occasion, delayed complaint investigation. There have been instances in which the JACO has not met with the requirements of the access legislation. These are covered in the discussion under “Complainants and Stakeholders”.

# Annexes

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## Annex A

### 2018/19 Statistics

#### Breakdown of complaints received

	Total number of complaints & enquiries received	Appointment-related cases received	Conduct-related cases received	Other enquiries received
APRIL	76	0	53	23
MAY	60	4	40	16
JUNE	108	2	85	21
JULY	74	1	46	27
AUGUST	61	0	36	25
SEPTEMBER	88	2	53	33
OCTOBER	85	1	53	31
NOVEMBER	73	0	52	21
DECEMBER	57	0	37	20
JANUARY	74	0	49	25
FEBRUARY	90	0	57	33
MARCH	96	0	56	40
<b>TOTALS</b>	<b>Number of complaints &amp; enquiries</b>	<b>Appointment related cases</b>	<b>Conduct related cases</b>	<b>Other enquiries received</b>
	<b>942</b>	<b>10</b>	<b>617</b>	<b>315</b>

#### Breakdown of conduct complaints received by First-Tier Body

Total Conduct related cases	Conduct cases relating to the JCIO	Conduct cases relating to Tribunals	Conduct cases relating to Advisory Committees
617	413	165	39

**Breakdown of cases finalised**

This table summarises the outcome of JACO cases by reference to the First-Tier Body initially responsible for considering concerns about a Judicial Office Holders' actions.

	Cases dealt with at 1st level – 'initial check'	Cases finalised at 2nd level – 'fast track' <sup>6</sup>	Cases finalised following a 3rd level 'Full Investigation'
Appointment	1	1	9
Conduct – relating to JCIO	252	128	43
Conduct – relating to Tribunals	61	57	20
Conduct – relating to Advisory Committees	21	8	16
<b>Total</b>	<b>335</b>	<b>194</b>	<b>88</b>

This table provides a breakdown of the outcome of completed Full Investigations by reference to all First-Tier Bodies involved (the table reflects the fact that the JCIO may have varying degrees of involvement with cases initially considered by Tribunals or Advisory Committees).

	Not upheld	Upheld and partially upheld	Total
Appointment	9 (100%)	–	9
Conduct – relating to JCIO	28 (65%)	15 (35%)	43
Conduct – relating to Tribunals	18 (90%)	2 (10%)	20
Conduct – relating to Advisory Committees	5 (63%)	3 (38%)	8
Conduct – relating to Advisory Committees and JCIO	4 (50%)	4 (50%)	8
<b>Totals</b>	<b>64 (73%)</b>	<b>24 (27%)</b>	<b>88</b>

<sup>6</sup> This includes 3 cases (1 relating to appointments; 1 to a JCIO matter and 1 to a Tribunal matter) which were initially referred for a Full Investigation but the JACO subsequently concluded following a Preliminary Investigation.

# Annex B

## **Case studies**

The purpose of the Case Studies is to provide a brief summary of the type of issues and complaints that the JACO has determined following a full investigation, and to illustrate his approach in determining whether there was maladministration.

The Case Studies are extracts from finalised investigations. They are intended to highlight only the points of interest. They are not necessarily reflective of all measures complained about or considered during the investigations in question.

## The JACO's Judicial Conduct remit:

### Case study A – JCIO

The JACO was aware in April 2018 that the JCIO was facing significant staff shortages – caused in part by the time taken to obtain the necessary security clearance to enable people selected to fill vacancies to actually start work. This was at a time that the JCIO was experiencing high volumes of complaints which fell to be rejected on the basis that they did not contain an allegation of misconduct.

There were initially 2 linked aspects to the JACO concerns. The first was the time taken to consider and assess complaints. The second was that complainants were given unrealistic expectations about the likely time taken to address their concerns. Indeed, they were initially advised (either by letter or by automatic acknowledgement if complaints were submitted electronically to the JCIO's "general" in box), that the JCIO hoped to provide a response within 15 working days.

The JCIO took a number of measures to address this, including the development of a more generic letter and supporting Annex to be sent in response to complaints that did not contain a misconduct allegation. Despite this it became apparent that it was routinely taking several months for the JCIO to make an initial assessment of complaints received, whereas JCIO guidance and acknowledgement letters had indicated that it hoped to provide an initial assessment within 15 working days.

The JACO appreciates that many complainants would have justifiable concerns about this level of service, especially if the complaint outcome appeared to be a generic letter; if the delay affected the ability of Judicial Office Holders complained against and of witnesses to recall events; or if Judicial Office Holders had retired in the period before the complaint was assessed. In previous years the JACO would have required further investigation into cases in which it took several months for a First-Tier Body to conduct an initial assessment and he may well have found maladministration.

However, questions of maladministration must also take account of the whole picture, including the pressures faced by the body whose actions are under review and other factors. The JACO was aware that the JCIO had placed material on its website explaining that staff shortages were affecting its ability to reply within 15 working days and information provided when the JCIO acknowledged complaints (either by letter or automatically in respect of complaints received by e-mail) both warned that there would be a delay and apologised for it. At the same time the JCIO was taking steps to both address the backlog and to address the staffing situation.

From June 2018 the JACO took the view that, in these circumstances, a question of maladministration would not arise if the only area of concern about the JCIO's process was that it took up to three months to assess



a complaint. From that point he only referred such cases for further investigation if the JCIO had taken more than 3 months to assess the complaint; if there appeared to be aggravating factors or there were other issues in the investigation process that might themselves lead to a maladministration finding. Such cases, as well as any which had been referred for further investigation, were considered in the light of the full circumstances and:

- there were 20 cases in which the only area of concern was the JCIO taking up to 3 months to assess a case which were not passed for further investigation. The vast majority of these cases were considered in the first 6 months of the year;
- there were 2 cases in which the JACO found that taking more than 3 months to conduct what appeared to be fairly simple assessments contributed to a maladministration finding;
- there was 1 instance in which the JACO found maladministration even though it had taken less than 3 months to assess the complaint. However, the complaint had been made against a Judge sitting in retirement and it was not possible to process an application to renew the appointment whilst a complaint was outstanding. The JACO found maladministration as the JCIO did not assess the complaint for 2 months after it was advised that the re-appointment was pending, despite a reminder in the interim;
- there were 5 cases in which other aspects in of JCIO's case management (including whether parties had been kept updated, whether expectations regarding likely timescales by which matters that needed to be considered by the Lord Chancellor and Lord Chief Justice were adequately managed and delay in responding to correspondence received after a complaint had been concluded) caused him to find maladministration or contributed to such a finding; and
- there were 16 cases in which JACO identified concerns about the JCIO's case management but did not find maladministration. 8 of these were about delay in the initial JCIO assessment and 9 concerned subsequent parts of the investigation process.

The JACO has welcomed the JCIO's observation that its staffing issues were largely resolved by the end of March 2019.

The JACO found maladministration in 19 cases involving the JCIO (including 4 cases which had previously been considered by Advisory Committees). This was significantly higher than the 5 cases upheld during 2017/18. The JACO appreciates that pressures caused by the JCIO's staffing position might have contributed to this increase. It is also possible that the incidence of maladministration would have been much higher if the JCIO had not taken steps to alert its complainants to the likelihood that the problems it was facing would lead to delay.

**Case Study B: – JCIO**

The JACO considered 2 cases which focussed on the JCIO's interpretation of rule 11 of the Judicial Conduct (Judicial and other office holders) Rules 2014. This requires that complaints to the JCIO are made "within three months of the latest matter or event complained of"<sup>7</sup>.

In both cases the complainant had expressed concerns about a Judicial Office Holder's actions on 3 occasions, 2 of which had occurred more than 3 months before the complaint was lodged. In both cases the JCIO had identified unparticularised concerns about the Judicial Office Holder's behaviour in a hearing which had occurred more than 3 months before the complaint. The JCIO rejected or dismissed most of the complaints (including concerns about the matters which had occurred less than 3 months before the complaint was made) on the basis that they related to judicial decisions or judicial case management and it asked the complainants to particularise concerns about the Judicial Office Holders' behaviour. In doing so it pointed out that that the complaints had been made "out of time"; asked why the complaint had not been lodged sooner; and said that it would not be able to consider any further information if the complainant did not identify exceptional circumstances that would warrant accepting the complaint "out of time".

In both cases, after considering the responses provided, the JCIO rejected concerns about the Judicial Office Holders' behaviour, on the basis that they had been made out of time. Both complainants argued to the JACO that this was inappropriate as the "latest matter or event" complained about was clearly within 3 months of the date of complaint. In response to queries the JCIO advised that, in such cases, it considered both complaints about individual actions by Judicial Office Holders and whether there was an overall pattern of behaviour. In these cases, it would have treated concerns about earlier hearings as having been made "in time" if they had formed part of pattern of ongoing behaviour, encompassing matters which had occurred in the 3 months prior to the complaint being made.

The JACO found that rule 11 could be read in a number of different ways. He did not seek to determine which was the correct one but rather whether the JCIO had followed a process that was underpinned by a reasonable interpretation of the legislation and relevant guidance. In doing so he:

- found that the JCIO had followed an appropriate process in determining that most of the issues raised (including all issues raised in respect of hearings that occurred within 3 months of the complaints being made) did not raise a question of misconduct;

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<sup>7</sup> There is equivalent provision in the rules setting out the investigation process to be followed by Tribunal Presidents and Advisory Committees. In addition, all First-Tier Bodies considering Judicial Conduct matters can accept complaints made outside that timescale in exceptional circumstances.

- observed that the purpose of the Judicial Conduct arrangements is to consider concerns about Judicial Office Holders' actions and that questions of fairness arise if complaints are investigated a long time after the event complained about. He noted that a general 3-month deadline is reasonable, especially if it is covered in the appropriate guidance and if there is provision enabling cases to be considered outside that timeframe in exceptional circumstances; and
- considered guidance (including guidance extant at the time the complaints were made but which has since been withdrawn) setting out the general requirement that complaints should be made within 3 months of the matter concerned.

The JACO considered that it was reasonable for the JCIO to have considered whether allegations that might amount to misconduct in hearings that occurred more than 3 months before the complaint was made by reference to whether the allegations in question formed part of an alleged pattern of misconduct, encompassing matters which occurred in the 3 months prior to the hearing. He also noted that the JCIO complaints identified many instances in which the Judicial Office Holders' actions over a period had a negative impact on the complainant and acknowledged that this might be seen as an ongoing pattern of unfair negative actions, encompassing the points on which the JCIO sought further information. However, he also noted that the JCIO had determined that the only matters which occurred in the 3 months before the complaint was lodged were about judicial decisions and, as the JCIO cannot review the merits of judicial decisions, it could not form a view as to whether the Judicial Office Holder's actions in respect of these matters might be unfair and therefore might constitute part of an ongoing pattern of negative behaviour.

Therefore, the JACO found that it was reasonable for the JCIO to have taken the view that rule 11 did not require it to treat concerns about matters which occurred more than 3 months before the complaints were made as having been made in time simply because concerns were also expressed about matters which had occurred in the 3 months prior to the complaint. He accepted that the position would have been different if concerns about matters in the 3 months before complaints were lodged had raised a question of misconduct. However, the JCIO found that this was not the case and the JACO was content that it followed an appropriate process in doing so.

The JACO also found that the JCIO properly considered whether there were exceptional circumstances that might warrant accepting the complaints "out of time" and that it followed an appropriate process in doing so.

**Case Study C: JCIO**

The JACO considered a complaint from an anonymous complainant following the JCIO's rejection of their concerns under Rule 8 because they did not provide their name. He complained that the JCIO was wrong to have rejected the complaint on that basis.

The JCIO asked the complainant to provide a full name but he said that his personal details were protected by the anonymity / non-disclosure order. The JCIO rejected the complaint under Rule 8 and explained that it was not permitted not to accept complaints where a full name was not provided.

Rule 8 sets out the requirements for a complaint document i.e. that it is legible; that it contains an allegation of misconduct on the part of a named or identifiable office holder; states the date or dates the alleged misconduct took place; and contains the name and address of the person making a complaint.

In the course of investigating the complaint the JACO Office established what the JCIO considered to be a name. The JCIO explained this would be a name which gave the appearance of being the complainant's actual name. It also said that it would not have accepted the complaint even if the complainant had provided a copy of the non-disclosure / anonymity order because it has no discretion to vary the terms of Rule 8 and that information provided to the JCIO is subject to the confidentiality requirements of section 139 of the Constitutional Reform Act 2005. It is also the case that, had he provided his name to the JCIO, it would not have appeared in the public domain, unless the complainant chose to do so.

The reasoning for the requirement to provide a name to the JCIO is that it needs to protect the process from abuse by malicious or vexatious complainants and it would be unreasonable to expect judges to respond to complaints without knowing the identity of the complainant.

Taking this information into account, the JACO was satisfied that the JCIO followed an appropriate process in that it had asked the complainant to provide his full name before taking the view that it fell to be rejected under Rule 8, provided him with an adequate explanation as to why the complaint had been rejected and directed him to complain to me if he was unhappy with the JCIO's handling of his concerns. Consequently, he did not uphold the complaint.

**Case Study D – Tribunal**

This complainant was concerned about the handling of a complaint that he had made 10 months after attending a 1<sup>st</sup> tier Social Entitlement Chamber hearing. The complaint had been rejected because it had been made outside the 3-month time limit for making complaints. The complainant complained to the JACO that he had good reasons for delay in making the complaint.

On investigation the JACO discovered that the complainant had requested a set-aside of the tribunal decision 1 month after the hearing. This email also contained a complaint about the Tribunal Judge which potentially related to his personal conduct. This had not been spotted at the time or passed to the President or a Regional Tribunal Judge for assessment.

When considering the second complaint, made 10 months after the hearing, the Regional Tribunal Judge referred to the earlier email but did not pick up on the earlier complaint when he rejected the later complaint on the basis that it had been made outside the time limit. The JACO noted that the earlier letter was on file and was referred to in the Regional Tribunal Judge's letter rejecting the second complaint. The JACO found that it was difficult to see how this letter could properly have been taken into account as it was not referred to in the Regional Tribunal Judge's reasoning when refusing to grant an extension of time to make the complaint.

The JACO found that this amounted to maladministration. He set aside the Regional Tribunal Judge's decision and directed that he reconsider the original complaint.

**Case Study E – Advisory Committee**

The complainant had originally attended a Magistrates Court and subsequently complained about the actions of the Magistrates who heard the case. The Advisory Committee dismissed the complaint after obtaining statements from both Magistrates in Court and the Legal Adviser. The complainant told the JACO that the Advisory Committee had not obtained sufficient evidence to properly consider his complaint, had not allowed him to comment on the statements obtained during the investigation, had not informed him of the process and had delayed the process.

On investigation, the JACO concluded that the Advisory Committee had carried out a thorough investigation, in accordance with disciplinary legislation. The complainant had had the opportunity to make any comments at the point when he made his complaint and was not entitled to consider or comment on the statements of other witnesses. However, the JACO had a number of concerns about the Advisory Committee's decision letter and its handling of subsequent correspondence. He found that:

- the dismissal letter had failed to set out the rule under which the complaint had been dismissed or to explain what evidence had been considered, thereby not complying with Rule 35(a) of the Judicial Conduct (Magistrates) Rules 2014 which requires Advisory Committees to explain why complaints have been dismissed. This had led the complainant to believe that the Advisory Committee had not properly investigated his complaint before dismissing it;
- the Advisory Committee had also failed to provide the JACO contact details in its dismissal letter and it incorrectly referred the complainant to the JCIO; and
- the Advisory Committee delayed dealing with post-dismissal correspondence. In considering this point the JACO noted that Advisory Committees are publicly funded bodies with limited resources and so there must be a point after which they are no longer expected to respond to repeated correspondence questioning decisions and it is reasonable to prioritise dealing with live cases over post-dismissal correspondence. The JACO found that it would have been open to the Advisory Committee to say that it would not respond further after dealing with one or two pieces of correspondence. It did not do so and so the complainant had a reasonable expectation that correspondence would continue.

The JACO partially upheld this complaint but did not feel any further redress was required as, in the interim the Advisory Committee had apologised to the complainant.

## The JAC's Judicial Appointments remit:

### Case Study F – JAC

The complainant had applied for a judicial appointment and had declared and outlined two matters on the application form which caused the JAC to have reservations about whether the complainant demonstrated good character. The complainant said were covered by confidentiality agreements that prevented the disclosure of further information and that they had previously been discussed with an officer from the JAC, who handled an enquiry as part of the selection process, and had stated that he had himself been subject to a similar agreement and agreed that these matters could not be disclosed. The complainant similarly said that no more information could be provided when the JAC wrote seeking more details. The JAC's Selection and Character Committee (SCC) subsequently rejected the application because the complainant had not provided information to satisfy it of good character.

The complainant stated that the JAC had erred in its statutory duty by taking into account information which it was not entitled to examine and requiring information which could not be lawfully provided; that sufficient information had been provided to show good character and suitability for office, which satisfied the relevant statutory provisions; and that the investigation had been flawed as it did not address the question of what evidence it was permissible to disclose.

Section 63(3) of the Constitutional Reform Act 2005 requires the SCC to satisfy itself that candidates recommended for appointment are of good character. The JACO observed that information that the candidate has provided. He found that it was clearly appropriate that candidates should have the opportunity to provide a full response to any concerns about their character but that applications could only proceed if the SCC was content that the candidate was of good character and that applications would fail if potential character issues came to light but information provided was insufficient to clearly demonstrate good character.

The JACO found that it was appropriate for the JAC to have sought legal advice on both the extent to which candidates had to demonstrate that they were of good character and whether the existence of a confidentiality agreement would preclude an applicant from disclosing information. He pointed out that he could not review the merits of any advice that the agreement should not preclude a candidate from providing further information about the matters which had been cited but that the effect of the advice was that the JAC believed that the complainant could provide further information about the issues referred to in his application. He also found that the SCC complied with its statutory duty when it concluded that it did not have sufficient information in the documentation provided by the complainant and his response to further queries to satisfy itself that the complainant of good character. It therefore decided that it could

not take the application forward. It did not ask the JAC to go back to the complainant or provide a further opportunity to make a more detailed declaration, and at this stage in the process the JAC could not act independently of the SCC and did not return to the complainant.

The JACO was concerned that the JAC poorly handled the complainant's enquiry about a character declaration. It would have been reasonable, once the complainant had replied to the request for further information, if the JAC had explained that the SCC would need to assess whether the information provided was sufficient to enable the application to proceed. However, the JACO found that information given to the complainant in an unrecorded telephone conversation and an email of 1 November 2017 gave the impression that the evidence provided about character would be put before JAC managers, who would come back if they needed further information. He also found that the JAC did not inform the Commissioners sitting as the SCC of the phone call or the content of the email so it could not take account of this in its deliberations.

The JACO noted that the JAC had stated that it did not believe that its 1 November 2017 e-mail made a promise to further discuss issues in the character declaration. He found that there had been an evident failure of communication and the JAC agreed to write apologising for any misunderstanding. In taking account of all the information considered by the SCC about the applicant, the JACO decided that the application was not adversely affected by any JAC failings and he did not uphold the complaint.

The JACO noted that the JAC had informed him that lessons have been learned from this incident and observed that this situation must not recur. He recommended that guidance make it clear that the SCC will not recommend candidates for appointment if there are issues raised about a candidate's character and the candidate cannot convince the SCC that they meet the high standards required. He also suggested that, in circumstances when the JAC does seek further information about character issues, that it clearly states that candidates will only be given one opportunity to provide full information regarding their character.



### **Case Study G – JAC**

In this appointment complaint the complainant had attended a selection day which comprised situational questioning on a court based scenario and an interview but was not recommended for appointment. The candidate was concerned that the selection panel did not take all the evidence into account when making its final assessment; that the panel had unfairly rejected the application because it had made up its mind at an early stage, and had looked for reasons to reject it, and that the JAC did not handle the complaint properly. The complaint also alluded to racism, sexism and class bias.

In considering this complaint the JACO reviewed the documentation surrounding this candidate's application including the selection panel comments, the scoring matrix showing this candidate's scores against other candidates' scores and JAC's response to the candidate's complaint. Officials in the JACO Office listened to the recording of the situational questioning and interview and reported back. The JACO also obtained information about the background and training of the panel members and of training specifically designed to tackle conscious and unconscious bias.

After considering the evidence the JACO concluded that the JAC had followed a proper process in assessing this candidate. The panel had considered all evidence including the candidate's self-assessment, references and performance at the selection day. The scores were consistent with the evidence and were correctly set out in the scoring matrix. In situational questioning the candidate was guided by the judicial panel member and the JACO was content that all panel members communicated with the candidate appropriately. There was evidence that the candidate was nervous under situational questioning and had to be encouraged to pass on to the next question, but that he was confident under interview. The information about the training provided to the panel members led the JACO to believe that they were fully aware of the issues of conscious and unconscious bias, and would seek to avoid it. He did not find that the panel's comment that the candidate "would be ready for appointment in the future" was patronising.

The complainant also expressed concern that the JAC did not follow a proper process in investigating his complaint. He stated that JAC was required to compare the recording of his interview with successful and unsuccessful Black and Minority Ethnic (BAME) candidates. The JAC confirmed to the JACO Office that a BAME candidate's recording was used as 1 of 4 comparators. The JACO found that this was appropriate as the issue was whether the complaint had been treated more harshly on account of ethnicity, which raised issues as to whether BAME candidates were, in general, treated more harshly than their white counterparts, and that it was appropriate to have considered an application from another BAME candidate and used white candidates as a comparator. The JACO said that it might have been better if the JAC had explained the ethnic background of

the 4 candidates whose applications it had considered. He also had minor concerns about a lack of clarity in the feedback provided but did not uphold the complaint.

## 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:-**

<b>PT 1</b> – to acknowledge receipt of all new complaints and correspondence from complainants, within 5 working days of receipt (98%).	<b>Not Achieved (96%)</b>
<b>PT 2</b> – to deal with 90% of all correspondence received within 15 working days of receipt.	<b>Achieved (96%)</b>
<b>PT 3</b> – 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.	<b>Achieved (99%)</b>
<b>PT 4</b> – when a case is ready for investigation we will aim to keep all complainants fully informed on a monthly basis in 98% of cases.	<b>Achieved (98%)</b>
<b>PT 5</b> – we will publish our performance against these indicators in our Annual Report and on our website.	<b>Achieved</b>

**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>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><b>All Achieved</b></p>
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**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>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><b>Achieved</b></p>
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**Annex D****Forecast and Actual Expenditure**

	<b>FORECAST</b>	<b>ACTUAL</b>
Staff costs and salaries	409,628	395,042
Office expenditure, Accommodation, Training, IT Services, Service costs and Miscellaneous	11,792	529
Legal costs	1,580	13,901
<b>Total expenditure</b>	<b>423,000</b>	<b>409,472</b>

**Annex E****Statistical Data 2012/2013 – 2018/2019**

Financial year	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
Cases determined	77	63	92	70	63	79	88 <sup>8</sup>
<b>Conduct</b> (JCIO, Tribunal, Advisory Committee)	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/ partially upheld 42 not upheld	8 upheld/ partially upheld 65 not upheld	24 upheld/ partially upheld 55 not upheld
<b>Appointment</b> (JAC)	2 upheld/ partial upheld 7 not upheld	2 upheld/ partial upheld 8 not upheld	2 not upheld	3 not upheld	3 not upheld	6 not upheld	9 not upheld
<b>Ombudsman's Time</b> (Days per week)	3	3	3	3 days (until 25/01/16) 2 days (wef 26/01/16)	2	2	2
<b>Staffing</b>	10 (9.4 FTE)	9 (8.4 FTE)	8 (7.5 FTE)	9 (wef 05/08/15) (8 FTE)	9 (8 FTE)	9 (8 FTE)	9 (8 FTE)
<b>Budget Forecast<sup>9</sup></b>	549,000	513,000	445,000	453,000	412,000	418,000	423,000
<b>Actual spend</b>	546,000	504,000	401,000	413,000	373,000	403,000	409,000

<sup>8</sup> Excludes 3 cases initially referred for further investigation in which the JACO subsequently found that a Full Investigation was not necessary.

<sup>9</sup> Budget figures rounded to the nearest £1,000.

