

Annual Report 2019-20



Judicial Appointments & Conduct Ombudsman

Annual Report 2019-20

**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 only the Lord Chancellor and the Lord Chief Justice (or a Designated Judge acting on his behalf) may be involved later in the process as only they can impose a sanction on a Judicial Office Holder.

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 fifth Annual Report.

Reviewing my activity in the year 2019/20 against my comments in last year's report, I am pleased with the progress that has been made.

This year has involved continued liaison between my staff and colleagues in the Lord Chancellor and Lord Chief Justice's offices to reduce the time taken to reply to the referral of my draft reports. I am grateful to all concerned for their efforts in this regard and pleased that it has resulted in a continued and significant improvement in response times.

My role is to review 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.

It remains the case that, in complaint processes carried out by human beings, who are often dealing with multiple pressures on their time and resources, it would be difficult to totally eradicate maladministration. Given this, it is pleasing to report that the instance of maladministration is lower this year than in 2018/19 and that it continues to be very low in relation to the overall number of cases considered by First-Tier Bodies.

I have continued to maintain that my aim is to provide a Second-Tier investigation function that is "rigorous, proportionate and humane". In both cases where I have found maladministration and those in which I have not, I am of the view that lessons can be learnt and I continue to be committed to using the information derived from my investigations to help First-Tier Bodies to improve their processes. This is one reason why I raise concerns in my reports and make recommendations even if I do not find maladministration. Much of the space in my report is devoted to detailing these matters, although my main conclusion is that, as in previous years, the incidence of maladministration remains very low. I was pleased that the incidence of maladministration had decreased by 25% from 24 cases in 2018/19 to 18 cases in 2019/20.

The majority of my work concerns issues of judicial conduct and the number of cases which I upheld, or partially upheld, equates to 7% of the cases which I determined:

- the number of JCIO cases in which I found maladministration equates to less than 1% of its caseload; and

- in 9 of the 18 cases, the maladministration that I identified did not impact my view that the decision taken by the First-Tier Body remained reliable. There was a small increase, compared to 2018/19, in the number of cases in which I identified maladministration which caused me to set aside the First-Tier Body's decision. However, of the 9 cases in which this occurred, in 5 the First-Tier Body had either already agreed to reconsider the matter in question or had acknowledged failures in its investigation process.

It should be borne in mind that my decisions to set aside determinations reflects my view that there had been some form of maladministration in the process followed in reaching such decisions. However, whilst I required these cases to be reconsidered, I cannot express a view as to whether a Judicial Office Holder's actions amount to misconduct.

Whilst this year I have reviewed a few cases in which the historic staff shortages suffered by the JCIO were a factor (see for example case study 1), I am happy to note that the JCIO has addressed this issue and it is no longer a major consideration.

I have also considered cases involving the Judicial Appointments process. Whilst there was one instance this year in which I found maladministration, it is the first time that I, or my predecessor as JACO Sir John Brigstocke KCB, have done so since 2013/14. This must be seen against the overall decrease in the number of JAC cases that I have determined, which represents a tiny percentage of the number of applications considered by the JAC. I also note that my finding of maladministration related to the feedback provided by the JAC to the candidate and its handling of their subsequent complaint, and did not concern the application process or the decision of the panel.

I have responded to correspondence following my decisions and there have been 3 applications for Judicial Review considered by the Administrative Court (including 1 which had been ongoing at the end of March 2019). I am pleased that the Courts have now concluded their consideration of the merits in these cases, which have not resulted in criticism of my Office. I am grateful to the Government Legal Department for its assistance in addressing these challenges and for the advice it has provided more generally.

My Office has continued to cooperate with colleagues in the wider MoJ to ensure that we contribute to departmental objectives and benefit from corporate resources.

I am pleased that the overall time taken to conduct Full Investigations in my Office has decreased during 2019/20 and hope that we will be able to sustain this improvement to ensure that cases are managed in a timely manner. I am conscious that the unprecedented circumstances of the COVID-19 crisis have required my Office, and also the First-Tier Bodies whose processes I can review, to adopt new ways of working and to overcome the difficulties associated with

remote working. It has been encouraging to see how cases continued to progress at the start of the lockdown, but I am aware that the logistics involved may invariably impact on my remit in the year ahead. I should, in particular, pay tribute to my staff, who individually and collectively, have ensured that COVID 19 and other challenges have not impacted on the quality service they strive to deliver.

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a horizontal line that extends to the right and then curves back under the 'P'.

Paul Kernaghan CBE QPM

Performance¹

The JACO remit

The JACO Office is regularly 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 concerns about the actions of parties with whom they have been in dispute as well as 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 pages 7-8 and described in JACO complaint literature, is very narrow. Staff in the JACO Office will not inform people who have concerns about a Judicial Office Holder that they cannot complain to the relevant First-Tier Body but they do try to avoid giving people who make contact unrealistic expectations regarding the scope of either the JACO remit or, if appropriate, that of the First-Tier Bodies concerned. This includes stating the position when cases are first considered; if a case proceeds to a Full Review 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.

Most of this chapter provides information about the issues which caused the JACO to find maladministration, identify issues which fell short of maladministration or make recommendations for improvements. This needs to be seen in the context of the fact that the overall incidence of maladministration is very low, especially when seen in the context of the overall numbers of cases determined by First-Tier investigating bodies and applications for Judicial Appointment considered by the JAC.

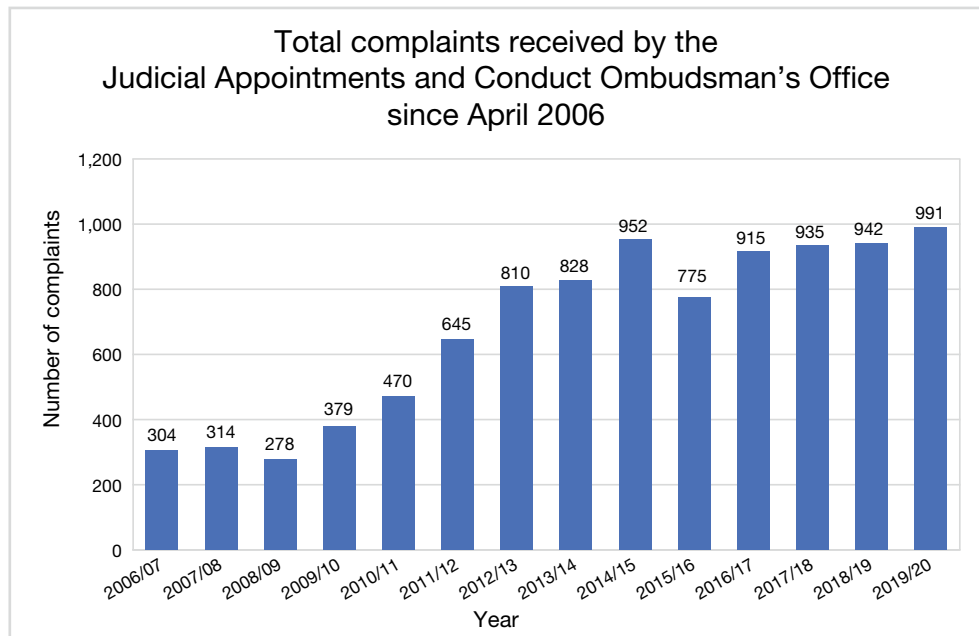
¹ Throughout this report (including the Annex B Case Studies) those involved in cases are all referred to as "he". This has been done simply to assist anonymity.

Targets

With one exception the JACO Office has achieved all the targets set out in the 2019/20 Business Plan within the allocated budget (see Annexes C and D). The exception is that it acknowledged receipt of all new complaints and correspondence from complainants, within 5 working days of receipt in 97% of all cases, whereas the target is to do so in 98% of cases. The JACO Office remains committed to providing a high level of customer service.

Enquiries and complaints received

The JACO Office received 2,510 pieces of correspondence during 2019/20; this included correspondence which raised issues which do not relate to the JACO remit or matters that can be considered by First-Tier investigating bodies². This included 991 enquiries and complaints, an increase on the 942 received during 2018/19. Most of these enquiries and complaints came within the JACO conduct remit rather than his appointments remit. 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.



² 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.

Initial checks

There were 418 cases³ which were found to fall clearly outside the JACO remit or were otherwise not taken forward. These include:

- 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 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.

Preliminary Investigations

The Preliminary Investigation process

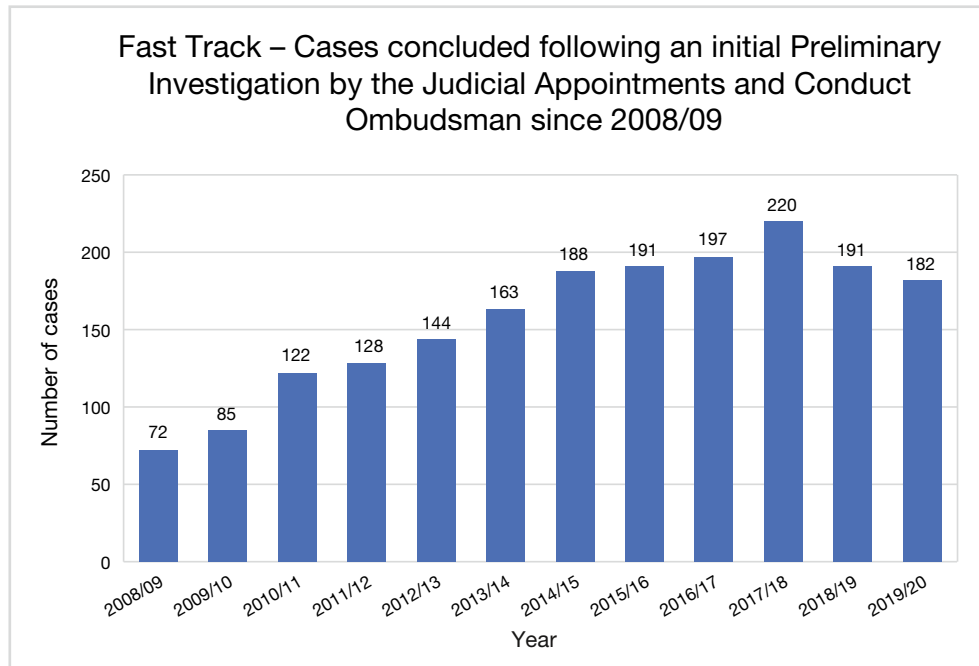
Complaints that appear to come within the JACO remit and which are taken forward receive a more detailed initial evaluation to enable the JACO to determine whether they warrant a Full Investigation or Review. This is in accordance with the terms of the Constitutional Reform Act 2005 which states that the JACO must carry out a 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”⁴.

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

⁴ 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 reasonable in all the circumstances to do so.

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 can take many months to be concluded. The Preliminary Investigation process enables the JACO Office's resources to be concentrated on the cases which require most detailed consideration and ensures that complainants are advised within a reasonable timescale if there is no prospect of the JACO finding maladministration.

The JACO Office has a target to complete 90% of Preliminary Investigations within 6 weeks of receipt of 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 referred 86 of the cases considered at Preliminary Investigation for further investigation.

The JACO concluded his investigations into 182 cases at Preliminary Investigation stage without further investigation. This was approximately 5% less than the number of cases concluded at this stage in 2018/19. Of these:

- 127 related to matters considered by the JCIO; 49 to matters considered by Tribunal Presidents; and 6 to matters considered by Advisory Committees; and

- 172 were concluded on the basis that the JACO felt that further investigation was unnecessary and 10 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.

The JACO's 2018/19 Annual Report stated that, during that year there had been approximately 20 cases in which JCIO staff shortages had led to significant delay which, due to the JCIO's steps to mitigate the position, were concluded following a Preliminary Investigation as there was no prospect of finding maladministration. The 2018/19 report also recorded that the JCIO had said that its staffing problems were largely resolved by March 2019. There were no cases concluded at Preliminary Investigation in 2019/20 in which there was such a direct link between staff shortages and JCIO delay, although some instances of delay remained.

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

Where the JACO cannot be certain, following a Preliminary Investigation, that he will not find maladministration, cases are referred for further consideration. In most of these cases the JACO conducts a Full Review in accordance with section 112 of the Constitutional Reform Act 2005 (sometimes referred to as a "Full Investigation"). This involves detailed and thorough investigation of the cases and often requires engagement with large volumes of complex documentation. It is, therefore, especially important for First-Tier Bodies to maintain a complete and accurate record of their consideration of complaints, and the evidence taken into account, to ensure that these can be provided to the JACO Office.

Further investigations also involve continued liaison with the First-Tier Bodies concerned. The JACO considers that this is appropriate to give them the opportunity to provide their observations on the process they have followed and to comment on possible findings emerging from the investigations. The JACO reviews any responses received, considering all the available evidence and relevant content from the responses is included in the final reports provided to complainants. In addition, the Constitutional Reform Act 2005 requires that, in cases where a Full Review is necessary, the JACO must 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 in 2019/20 in which comments received at this stage impacted the JACO's view. In this instance, the JACO had been minded to partially uphold the complaint, but ultimately determined that such a finding was not proportionate given the accidental nature of the oversight which had led to his initial concerns. In any event, the recommended redress, which was an apology, remained unchanged.

It has taken less time than in previous years to complete Full Investigations. Approximately 25% of the 84 investigations concluded during 2019/20 took more than 6 months and the investigations into 4 concluded cases took more than a year. This is significantly less time than in 2018/19, in which approximately 52% of cases took more than 6 months and 9 cases took more than a year. There were, however, 3 outstanding cases in which investigations had been ongoing for more than 12 months at the end of March 2020⁵.

One factor that contributed to the improvement was a decrease in the length of time taken to obtain responses to draft reports, from the Lord Chancellor (or the senior Official delegated to respond in respect of cases which the JACO is not minded to uphold) and the Lord Chief Justice (in respect of matters within the JACO conduct remit) or the JAC (in respect of matters within the JACO appointments remit):

- the proportion of cases in which a response was received in less than 2 months increased from approximately 43% to 55% of cases⁶;
- the proportion of cases in which a response was received in less than 3 months increased from approximately 60% to 81% of cases⁷;
- there was only one case in which a response took more than 6 months and one case in which a response took over a year; and
- once more, there have not been any concerns regarding the responses to draft reports referred to the JAC, who responded, along with the Lord Chancellor (or delegated Official), within 2 months in all of the cases which were in the JACO appointments remit.

As reflected in the previous JACO Annual Report, having determined that the previous target response time of 3 weeks was unrealistic, in 2018/2019 it was agreed that the JACO would request a response within 8 weeks. In addition, the JACO Office has also continued to use a more structured system for monitoring and chasing outstanding responses.

5 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 investigation.

6 On the basis that a month is equal to 4 weeks, i.e. 20 working days.

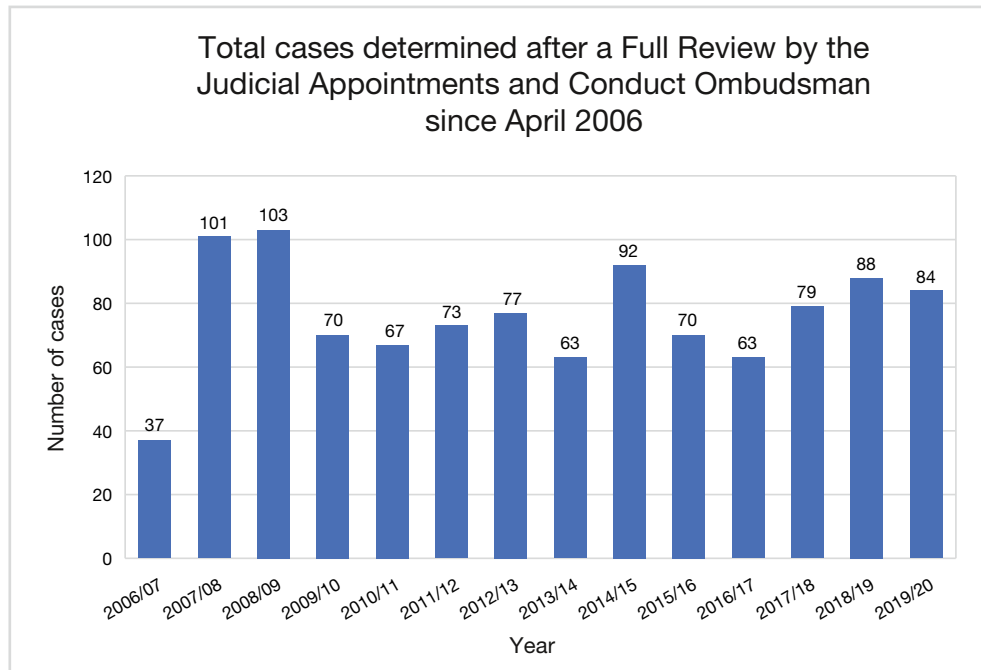
7 On the basis that a month is equal to 4 weeks, i.e. 20 working days.

The statistics cited above suggest that these measures, including the achievability of the target has served to encourage better response times. Further, in 2019/20, the Lord Chancellor’s delegated authority to respond to draft reports, in cases which the JACO is not minded to uphold, has been passed from Judicial Office to MoJ Officials. Although the average response time has remained the same since the change, there has been an increase in the percentage of cases in which a response has been received within 1 month.

The JACO Office seeks to keep people whose complaints have been referred for further investigation informed about the position. This is generally done monthly, 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 either the JAC Chairman or the Lord Chief Justice). The JACO Office issued updates in 99% of instances when they were due (the target was 98%).

Number of complaints determined

The JACO determined 84 cases following a Full Review during 2019/20 (this included cases in which an investigation had been ongoing at the end of March 2019). This is a decrease from 88 in 2018/19, but is broadly similar to the numbers determined in the years prior to that⁸.



⁸ Since 2009/10 the number of cases determined has fallen with the range 63-92.

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

- 3 fell within the JACO Judicial Appointments remit;
- 46 concerned matters considered under the Judicial Conduct arrangements by the JCIO. This included 5 cases concerning the JCIO's handling of concerns expressed about a Coroner's actions and 1 case which involved consideration of the JCIO's handling of Judicial Conduct matters referred by an Advisory Committee;
- 27 concerned matters considered under the Judicial Conduct arrangements by Tribunal Presidents;
- 9 concerned matters considered under the Judicial Conduct arrangements by Advisory Committees. This included 1 case in which matters were initially considered by an Advisory Committee who referred matters to the JCIO as they had recommended a disciplinary sanction;
- 1 complaint was made by a former Judicial Office Holder, who had been removed from Office following a disciplinary panel, who asked the JACO to review the process by which concerns about his actions had been considered; and
- 1 complaint concerned the process by which concerns expressed about 1 member of the Judiciary by another member of the Judiciary had been considered.

In addition:

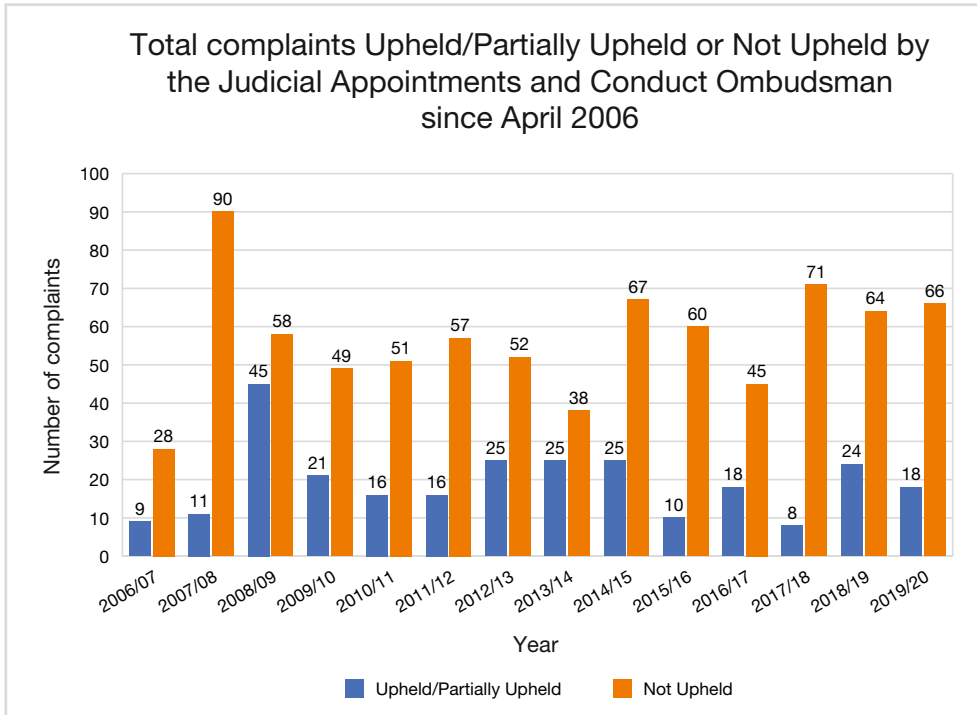
- there were 3 instances during the year in which cases referred for further investigation were concluded without a Full Review being conducted as it became clear at an early stage of the further investigation process that there was no prospect of the JACO finding maladministration. A further investigation, was effectively withdrawn as the complainant did not respond to correspondence from this office once the matters, for which the complaint had been put on hold, had been concluded; and
- at the end of March 2020, there were 15 cases in which the JACO was awaiting responses to referred draft reports (the equivalent figure at the end of March 2019 was 18). This is usually the final stage in the JACO investigation process.

Outcome of complaints determined

The JACO determined 66 cases which he did not uphold, which amounts to 79% of the cases determined following a Full Investigation.

The JACO partially upheld 16 cases, which amounts to 19% of the cases determined following a Full Investigation. This is less than in 2018/19, in which the JACO partially upheld 27% of cases determined following a Full Investigation.

The JACO also fully upheld 2 cases, which amounts to 2% of the cases following Full Investigation. This is more than in 2018/19 when the JACO did not fully uphold any cases.



Overall, the percentage upheld or partially upheld (21%) is below the average percentage in previous years⁹. Of the cases which the JACO upheld, or partially upheld:

- 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); and
- 1 was in respect of a JAC case.

Issues which caused the JACO to find maladministration included:

- 1 JAC case in which the feedback provided to a candidate was ambiguous and the JAC missed an opportunity when responding to the complainant to provide clarity on this;
- 2 cases, one dealt with by the JCIO and one by a Tribunal President, in which an aspect of the complaint was overlooked and was, therefore, not addressed;

⁹ The average percentage of cases upheld between 2006/2007 and 2018/2019 was 26% and has ranged from a low of 10% to a high of 44% in this period.

- 6 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:
 - 1 case in which, in determining whether a complaint had been made out of time, the JCIO did not appropriately consider when the last event or matter complained of occurred;
 - 3 cases in which the JCIO rejected complaints under Rule 8, which merited further investigation; and
 - 2 cases in which the JCIO prematurely dismissed the complaint under the provisions of Rule 21 without meeting the requirement of Rule 23 to consider available sources of independent evidence which would help it to verify the facts in dispute. In 1 of these cases the JCIO had listened to a recording of the hearing for a date other than the one complained about;
- 2 cases in which the JCIO failed to acknowledge further particularisation provided by complainants or respond to post-complaint correspondence which repeated the issue;
- 6 cases dealt with by the JCIO in which concerns about case management, poor communication and delay either amounted to maladministration or contributed to a finding of maladministration. In 2 of these cases the JCIO had failed to apologise for the delay in its correspondence with the complainant. In two of these cases the delays were significant (8 and 13 months);
- 1 case dealt with by a Tribunal President in which concerns about case management, poor communication and significant delay (it took 12 months to conclude the case) amounted to maladministration;
- 2 cases in which the JCIO failed to meet a stated commitment to either provide further clarification of its decision or respond to post-complaint correspondence; and
- 1 case in which the JCIO did not notify a complainant of the deadline for responding to a request for particularisation.

Other themes and issues emerging from investigations

While determining whether there was any maladministration in the process followed by First-Tier Bodies in responding to complaints, the JACO looks to identify any issues of concern that do not amount to maladministration.

The JACO's Judicial Appointments remit

The JACO only concluded 3 cases regarding the Judicial Appointments process in 2019/20. 1 case was partially upheld. Given that the number of applicants that the JAC considers for appointment has been, in recent years, around 5,000¹⁰, it is notable that the number of complaints to this office is so small. Further, the JACO has not upheld or partially upheld an Appointments case since 2013/14.

Significantly, in the case that was partially upheld, the JACO did not find that there had been maladministration in the process followed by the JAC in determining the application. Instead his concerns related to the feedback the JAC voluntarily provided to the candidate and the JAC's handling of the complaint made by the candidate. The JACO found that some of the feedback given was ambiguous and that the JAC missed the opportunity to clarify matters when it responded to the complaint.

The JACO did not express any concerns in the 2 other cases, which were not upheld.

The JACO Judicial Conduct remit

There were 13 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:

- contained errors, such as: referring to the incorrect provisions under which a complaint was rejected or dismissed; misquoting the relevant provisions; omitting a word from its summary of the complaint; or misspelling a name;
- could have better explained: the decision made; the process followed; or the information considered. Of these, two cases involved the proforma letter issued by the JCIO when rejecting complaints as outside its remit and instances in which this approach did not provide the complainant with sufficient clarity on why their complaint had been dismissed. The JACO is pleased that the First-Tier Body welcomed feedback regarding the proforma and is considering the need for bespoke responses in certain cases; and
- could have usefully explained that the First-Tier Body 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.

There were 19 cases in which the JACO expressed other concerns which fell short of maladministration. These included concerns about:

- delay or poor case management in 9 cases:

¹⁰ According to the JAC's official statistics it considered 4917 applications in 2018/19 and 5125 in 2017/18.

- in 1 case the JACO noted that it would have been preferable if the First-Tier Body had communicated to the complainant that it might take longer than usual to address the complaint;
- in 2 cases the delay would have been sufficient to warrant a finding of maladministration, but the JACO took into account the exceptional circumstances (significant staff shortages) faced by the First-Tier Body at the time of the complaint and the fact that it had since recruited and trained new staff and was dealing with complaints in a timely manner;
- in 1 case there was a delay in the complaint being passed to the appropriate First-Tier Body to address; and
- in 1 case, the complaint had been marked in error as not requiring a response;
- oversights in 2 cases which meant that First-Tier Bodies had not addressed concerns which could not have impacted on the outcome of the complaint;
- a failure to properly notify people of the JACO role and remit;
- a failure to follow the prescribed procedures which would not impact the outcome of the complaint;
- in 1 case, the First-Tier Body had not correctly applied the Rules regarding out of time complaints in terms of determining when the latest event or matter complained of was;
- in 1 case, regarding the First-Tier Body's handling of post-complaint correspondence;
- in 1 case that correspondence was not acknowledged and it was not conveyed that it had been forwarded; and
- in 1 case the JCIO's website provided an out of date address for an Advisory Committee (the Court in question had since closed).

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

- the limits of the JCIO's remit, which does not allow it to comment on judicial decision and judicial case management except in instances where a higher Court is so critical of the lower Court's behaviour in applying the law as to warrant further investigation. The underlying principle of judicial independence was also relevant to cases in which the JCIO had considered complainants concerns that Judicial Office Holder's decisions or case management had breached the terms of the European Convention on Human Rights Act, the Equality Act 2010 or the Equal Treatment Bench Book (ETBB).

- whether it is appropriate to consider a complainant's motive (i.e. whether they are vexatious) in considering the question of proportionality when determining whether to investigate any independent evidence that might help to verify the facts in dispute; and
- the potential overlap between complaints about a Judicial Office Holder's personal conduct, requests for a review of Tribunal decisions and concerns about the Tribunal Administration, and, in particular, the interaction between the HM Courts and Tribunals Service Complaints Process and the Judicial Complaints Process.

Redress

The JACO did not recommend any redress in the 3 cases which he considered regarding the appointments process. Although he partially upheld 1 case, he did not find it necessary to recommend any redress as the JAC had already apologised and agreed to provide the candidate with additional feedback.

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 9 of the cases which the JACO upheld, or partially upheld, the maladministration related solely to the management or administration of the First-Tier Body and did not raise a question as to whether the determination reached was unreliable.

In the remaining 9 cases the maladministration raised issues which resulted in the JACO setting aside the relevant First-Tier Body's decision, in whole or in part. Of these:

- 8 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 had acknowledged failures in its investigation process; and
- in 1 the JACO noted issues which might limit the scope to conduct a reinvestigation.

In 2019/20, the JACO did not make any recommendations that monetary compensation be awarded.

In terms of other forms of redress:

- in 12 cases, which were upheld, the JACO found that that an apology was appropriate redress. Of these:

- in 5 cases the JACO would have recommended an apology but the First-Tier Body had already agreed to apologise; and
- in 6 cases the JACO did not recommend any redress as the First-Tier Body had previously apologised; and
- the JACO found that an apology was warranted in respect of matters which he did not uphold in 7 cases. In 5 of these he noted that the First-Tier Body had previously apologised.

Preventing a recurrence of concerns identified during JACO reviews

To prevent a recurrence of concerns identified during JACO reviews the JACO considers making recommendations for systemic changes to assist First-Tier Bodies in identifying and addressing concerns, regardless of whether he found maladministration or upheld the complaint.

The JACO did not make any recommendations for systemic changes in respect of matters within his Judicial Appointments remit.

The JACO made systemic recommendations in 10 cases which fell within his Judicial Conduct remit. These included observations about:

- in 2 cases, the general management and resourcing of the First-Tier investigation process and, in particular, the need to implement appropriate systems to ensure older cases and reinvestigations directed by the JACO are prioritised;
- in 2 cases, the information provided to complainants about submitting supporting material, in particular the required formats in which it can be submitted and the need, in instances where complaints are made through the JCIO's online portal, for further documentation to be uploaded to the portal, as opposed to being emailed;
- in 1 case, providing complainants with details of the JACO and his current contact information;
- in 1 case, keeping deferred cases live;
- in 1 case, robustly monitoring work undertaken during overtime;
- in 1 case, continuing to update complainants during periods of workload; pressures, irrespective of their engagement;
- in 1 case, ensuring that, even when an initial complaint document contains full representations to extend the time-limit for making a complaint, the complainant is made aware of the further opportunity to make representations on exceptional reasons for delay in making the complaint;
- in 1 Tribunal case, making it clear to complainants that concerns about its members would be dealt with under the Judicial Conduct (Tribunals) Rules 2014;

- in 1 Tribunal case, the overlap between different complaint systems and how complaints about Judicial Office Holders received through the HM Courts and Tribunals Service complaints mechanisms might be better integrated into the Judicial Conduct complaint investigation;
- in 1 Tribunal case, ensuring that the issue of whether a complaint has been received is treated separately to any investigation of what has happened when a complaint has not been received; and
- in 1 Tribunal case, ensuring that it takes a consistent approach when corresponding with informal representatives, when consent is given by the complainant, and seeks to manage their expectations more clearly.

Post investigation correspondence and challenges to JACO decisions

The JACO considers a limited amount of correspondence from people who are dissatisfied with the outcomes of their complaints (following Preliminary or Full Investigations). 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 (including deciding that further investigation was required having received correspondence raising issues that had not previously been considered). There were no instances in 2019/20 in which the JACO changed his mind as to whether further investigation was required or set aside his determination following a Full Investigation in light of representations made in post-complaint correspondence. During 2019/20 the JACO responded to:

- approximately 50 pieces of correspondence sent in response to cases concluded following a Preliminary Investigation; and
- approximately 25 pieces of correspondence sent in response to cases concluded following a Full Investigation.

In 1 case, which was concluded following a Full Investigation, post-complaint correspondence identified an error in the reports. This did not impact on the outcome of the case, in which the JACO had found maladministration and set aside the First-Tier Body's determination. However, the error meant that the report provided inaccurate information which might have impacted on the re-investigation. The JACO apologised for the error and took steps to notify the First-Tier Body of the error.

There were 3 cases in which applications for Judicial Review involving the JACO were considered. In the first case, the application had been refused on the papers in 2018/19 and was refused again at an oral hearing in 2019/20. The complainant sought to permission to appeal the refusal to the High Court and this was also refused. In the second case, the JACO had previously set aside his decision to conclude a case at the Preliminary Investigation stage and had referred it for a Full

Investigation. Following the JACO's decision further Judicial Review proceedings were initiated, but were ultimately withdrawn as the First-Tier Body agreed to reconsider the case. In the third case, permission was refused.

Analysis

The volume of correspondence, and the number of enquiries and complaints, received in the JACO Office during 2019/20 increased from the previous year. 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). The increase in correspondence and cases or enquiries appears to have been in respect of matters which, albeit strongly felt, fall outside of the JACO remit rather than because of an increase in the incidence of issues within the Judicial Conduct process. The JACO determined 269 cases, following a Full or Preliminary Investigation during 2019/20. This was 5% less than in 2018/19 and the number of concluded full investigations decreased by a similar proportion to 84.

The number of Judicial Conduct cases upheld or partially upheld decreased from 24 to 17 and the number of cases in which the JACO set aside aspects of First-Tier Body decisions increased from 7 to 9. In reaching these conclusions the JACO was commenting only regarding the First-Tier investigation process. His remit does not enable him to express a view on matters before the Courts or to say whether a Judicial Office Holder's actions might amount to misconduct.

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

- the number of cases in which the JACO found maladministration amounts to approximately 7% of the cases concluded at full or preliminary investigation. The proportion of cases in which the JACO set aside aspects of a First-Tier Body decisions was approximately 3% of cases that the JACO determined;
- the number of JCIO cases in which the JACO found maladministration amounts to less than 1% of the JCIO's annual caseload in recent years;
- It is likely that the 2 cases which the JACO upheld in respect of Tribunal matters was also less than 1% of the annual caseload (although there are no published figures reporting the number of complaints regarding Tribunal members considered under the Judicial Conduct arrangements). The JACO did not find maladministration in any Advisory Committee matters;
- The fact that the JACO found maladministration in 1 JAC case needs to be seen in the light of:

- the size of the JAC's caseload. Although the investigation was concluded during 2019/20 it related to events during 2018/19. In that period the JAC considered approximately 5,000 applications for Judicial Office, of which approximately 80% were unsuccessful;
- the fact that this is the first JAC case in which the JACO has found maladministration since 2013/14; and
- the issues which caused the JACO to find maladministration were in relation to how correspondence after it had been decided that the candidate would not be recommended for appointment, as opposed to the handling of the application itself. The JACO did not find that redress other than an apology was appropriate.

Complainants and stakeholders

The JACO and the JACO Office have continued to maintain good working relationships with stakeholders, including the First-Tier Bodies whose processes the JACO can review. This has been done whilst ensuring that the JACO maintains his independence, including the right to conduct reviews as he sees fit and to reach his own conclusions, based purely on his findings of whether processes were maladministrative, and the effect of any maladministration, subject to the requirements of the relevant legislation and guidance. He also seeks to ensure that First-Tier Bodies have a fair and appropriate opportunity to contribute to the JACO investigations.

In addition, the JACO recognises that he has a shared interest with stakeholders in improving the processes which he oversees. This may entail making recommendations for systemic change and pointing out errors, some of which might be very minor. He has also shared advice and other relevant observations where it is appropriate to do so.

With that in mind, the JACO has 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 4th such training day.

In April 2019 the JACO met with the Lord Chancellor and Lord Chief Justice in a “trilateral” discussion covering issues arising from his remit. He has also had discussions with senior MoJ Officials.

The Memorandum of Understanding between the JACO Office and the MoJ requires the JACO to submit a report to the Lord Chancellor and Lord Chief Justice covering his work in the first six months each year. The JACO provided this report, which was also sent to the JAC Chairman, in December 2019.

Assistance with the complaints process

The JACO Office receives some 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. The JACO Office recognises that it cannot preclude people from complaining to the relevant First-Tier Body and it cannot say definitively how the First-Tier Body would handle any complaint made. However, the JACO Office is keen to avoid creating unrealistic expectations about the Judicial Complaints process. This is especially the case where it appears that people may be looking to use it to pursue matters which would not raise a question of misconduct or if pursuing a Judicial Complaint might mean that they do not engage with other routes that might address strongly felt concerns. Therefore, 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 JACO Office. The JACO Office is aware of its responsibilities under the Equality Act 2010 and tries to take reasonable steps to enable people who might otherwise have difficulties in accessing the JACO service to do so. This may include allowing people who are unable to submit a complaint in writing to set out concerns orally and, if possible, asking them to indicate whether a note recorded during the conversation is complete and accurate.

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 or the JACO Office to find that the level of service provided fell below the level expected included:

- 4 instances of delay in responding to correspondence or progressing cases. This included 1 instance in which the JACO Office had misread an e-mail headed "acknowledge thank you" as an acknowledgement of a previous e-mail from the JACO Office rather than a request to acknowledge and progress the e-mail in question; and 1 instance in which the inadvertent deletion of a complainant's e-mail exacerbated previous delays;
- 1 instance in which the JACO Office had not adhered to a complainant's request regarding how it should communicate with him and communicate the JACO's decision in respect of his complaint;
- 2 instances in which the information provided in updates was either incomplete or felt to be opaque;
- 1 instance in which the JACO Office misunderstood the position in JCIO investigations and provided incorrect advice to a complainant's MP. The JACO Office advised that the constituent had made further representations to the JCIO in connection with its decision to reject his complaint on the basis that it had been made "out of time" when the constituent had not sent such a letter;
- 1 instance in which the JACO Office had provided information about how to complain to the JACO when the correspondent had requested how to complain about the JACO organisation; and
- 9 instances in which requests for information were not responded to within the specified statutory timeframe (see Corporate Governance chapter).

The JACO and the JACO Office also received compliments from complainants and others during 2019/20. These included:

- comments from 3 people who expressed disappointment that their complaints had not been upheld but expressed thanks for the hard work, commitment and attention to their case; and
- a comment thanking the JACO and the JACO Office for the report and accepting the conclusions and: “I would especially like to thank you for keeping me regularly updated on proceedings, and commend the JACO on the depth and quality of the finished report”.

Corporate Governance

Status of JACO Office

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

During the year JACO Office Officials met on a regular basis with the MoJ Sponsorship Team to discuss the Office's performance. Officials also participated in MoJ groups discussing matters such as Information Assurance, security, health and safety and the provision of services and support to Arm's Length Bodies. These are useful and constructive discussions.

The European Union

The JACO's remit enables him to consider issues within his remit, regardless of where the complainant lives. This did not change when the United Kingdom left the European Union and there is no expectation that there will be a significant impact on the JACO role when the transition period comes to an end.

Financial resources

The JACO Office continued in its commitment 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 actual expenditure against the budget. These controls have enabled the key business targets to be met within the constraints of the delegated budget.

The JACO Office budget for 2019/20 was £445k, compared to £423k in 2018/19. The increase took account of the fact that the JACO Office was required to meet additional pension costs in 2019/20. The JACO Office is based in Ministry of Justice accommodation and its budget does not reflect the costs of occupying that accommodation.

Outturn expenditure in 2019/20 amounted to approximately £434k. The JACO Office's outturn expenditure has been less than budgeted for 14 consecutive years. Approximately 95% of outturn expenditure was in respect of staff costs, including the JACO's contracted remuneration of approximately £41k.

2019/20 saw an increase in the outturn expenditure figure in respect of legal fees, approximately £17k compared to the £14k in 2018/19. This resulted from legal challenges to the JACO's decisions in lengthy pieces of litigation. The JACO Office

was aware that there were some invoices for legal assistance provided by the Government Legal Department during 2019/20 which had not been processed by the end of March 2020.

The JACO Office did not make any ex-gratia payments during 2019/20.

The JACO Office budget for 2020/21 is £454k. As in previous years 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 2020/21 might exceed that amount.

Staff resources

The JACO holds a public appointment; 2020/21 will be the final year of the current appointment.

There were no instances during 2019/20 in which the Lord Chancellor appointed a Temporary JACO 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 2019/20.

JACO Office staff are Civil Servants, employed and appraised under MoJ terms and conditions, including the MoJ's "Reward and Recognition" scheme.

The JACO office is based in the MoJ headquarters at 102 Petty France. It encourages flexible and remote working for all staff 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 4 years and 4 have been with the Office since its inception in 2006.

The JACO Office lost, on average, less than 3 days per member of staff to sickness during 2019/20.

No compensation or exit payments were made to staff during 2019/20.

MoJ Corporate plans and longer-term expenditure trends

The JACO Office provides input into the development of MoJ 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.

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

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.

The JACO Office continued work to ensure compliance with the European Union General Data Protection Regulation and the Data Protection Act 2018 ensuring that the legal basis under which the JACO and the JACO Office processes data (including personal data) is clear. A primary objective is to only process personal data to enable the JACO 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. The JACO office worked to ensure the 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 and it has begun to implement a plan to ensure electronic records are also destroyed when no longer required. All JACO Office staff are fully aware of the need to safeguard information and the processes for doing so, particularly the case when working remotely

There has been 1 information breach during 2019/20, when the JACO Office inadvertently put a page of material relating to one complainant into a package of material sent to another. The JACO Office took appropriate steps to report the matter and inform the complainant whose data had been lost, although it failed to notify them timeously when the information was returned.

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 (including a Counter Fraud strategy that was developed and discussed with JACO Office staff during 2019/20). Where appropriate these follow the relevant MoJ arrangements.

The JACO Office undertakes to respond to requests for information under the Freedom of Information Act 2000 and the Data Protection Act 2018 and is committed to disclosing whatever it can appropriately, in line with the relevant legislation. It considered 27 requests for information (including requests for reviews of decisions made) under the Access Legislation in 2019/20, as well as 1 inquiry from the Information Commissioner's Office, which was not upheld. Responding to such requests can be a difficult and complex process, involving the consideration of large volumes of documents and the scrutiny of legislation that the JACO Office would not normally consider. 18 of the requests for information were responded to within the specified time limits.

Annexes

Annex A

2019/20 Statistics

Breakdown of complaints received

	Total number of complaints & enquiries received	Appointment-related cases received	Conduct-related cases received	Other enquiries received
APRIL	90	1	60	29
MAY	64	0	36	28
JUNE	78	2	50	26
JULY	74	0	50	24
AUGUST	63	1	41	21
SEPTEMBER	79	1	45	33
OCTOBER	103	0	55	48
NOVEMBER	66	0	34	32
DECEMBER	71	1	34	36
JANUARY	92	1	48	43
FEBRUARY	116	2	56	58
MARCH	95	2	53	40
TOTALS	Number of complaints & enquiries	Appointment related cases	Conduct related cases	Other enquiries received
	991	11	562	418

Breakdown of conduct complaints received by First-Tier organisation

Total Conduct related cases	Conduct cases relating to the JCIO	Conduct cases relating to Tribunals	Conduct cases relating to Advisory Committees
562	365	169	28

Breakdown of cases finalised¹¹

	Cases dealt with at 1 st level – ‘initial check’	Cases finalised at 2 nd level – ‘fast track’	Cases finalised following a 3 rd level ‘full investigation’
Appointment	5	-	3
Conduct – relating to JCIO	272	130	46
Conduct – relating to Tribunals	104	50	27
Conduct – relating to Advisory Committees	37	6	9
Total	418	186¹²	84¹³

Cases investigated, determined and finalised

	Not upheld	Upheld and partially upheld	Total
Appointment	2	1	3
Conduct – relating to JCIO	30	15	45
Conduct – relating to Tribunals	25	2	27
Conduct – relating to Advisory Committees	8	-	8
Conduct – relating to Advisory Committees and JCIO	1	-	1
Totals	66	18	84

11 The number of cases received will not correlate with the number of cases finalised as some cases will have been received in the previous year and finalised this year, and similarly ongoing cases as at 31 March 2020 have been carried into the next year. The outcome will be reported in Annual Report relating to the year in which the case is concluded.

12 These figures include 4 cases referred for further investigation which were subsequently concluded without a Full Review.

13 The numbers of cases recorded in the individual rows in this column is greater than the overall sum as 1 case concerned processes followed by both an Advisory Committee and the JCIO and is therefore recorded under both rows.

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.

Case study 1 (JCIO)

The JACO received a complaint raising issues that the JCIO did not take account of additional information that the complainant provided and the caseworker did not progress the second part of his complaint, even when he queried this in subsequent correspondence with the JCIO. The complainant also raised issues of delay by the JCIO in addressing his correspondence.

The complainant had raised concerns with the JCIO about the handling of an application in the Family Court, and he was concerned about the way his application was handled by the Family Court Judge. The JCIO found that the complaint only concerned the judicial decisions and judicial case management and did not raise a matter of misconduct, it therefore rejected the complaint.

The JACO found that, at the point the complaint was made to the JCIO, it was transitioning from a system in which complaints would be made direct to the JCIO email inbox, to a system where complaints had to be submitted via an online complaints portal (or by post). The complainant had no trouble in making his initial complaint and managed to provide further particularisation by email. The JCIO considered both sets of information before rejecting the complaint. Unfortunately, the complainant also used the new complaints portal to provide some additional information on the complaint which was not contained in the email of the same date. Further confusion was caused when the second portal complaint was initially considered to be a new complaint and allocated a different complaint number – this complaint was cancelled when the JCIO discovered it was not a new complaint. The JCIO did not realise that this portal complaint provided additional information which at least raised a question about the Judge's behaviour, and which had not been fully set out in the email of the same date (which the JCIO did consider). Therefore, the JCIO's responses to the complainant did not properly deal with all the issues that he raised. When the complainant contacted the JCIO again to raise concerns that it had not fully considered his full complaint, the JCIO caseworker did not realise that two sets of information had been submitted on the same date by different means, and so believed that all the information had been considered. For this reason, no further action was taken on the complaint at this point.

The JACO considered that the JCIO had not considered the full complaint when it made a decision to reject it, and when it confirmed this decision in subsequent correspondence. The powers available to the JACO if he identifies maladministration include, under section 111(5) of the Constitutional Reform Act 2005, setting aside a determination (or part of a determination) if maladministration renders it unreliable. He therefore set aside the JCIO's decision and asked it to reconsider the complaint in the light of all the evidence provided by the complainant.

The JACO concluded that there was some delay by the JCIO in addressing the original complaint and in answering the complainant's follow-up correspondence, but concluded that the delay was not excessive, and did not amount to maladministration. He noted that at the time the JCIO was suffering from a shortage of trained staff and was having to prioritise the work it could do.

Case Study 2 (JCIO)

The complainant had originally attended proceedings in a Family Court before a District Judge. He subsequently complained to the JCIO that the Judge gave his ex-partner a personal email address in order to communicate information about the case which he suggested was unprofessional and not impartial.

The JCIO responded to the complainant and rejected the complaint under Rule 8 of the Judicial Conduct (Judicial and other office holder) Rules 2014 on the basis that it was outside of the JCIO's statutory remit. It provided the complainant with its standard appendix: 'Further information about our remit' which explained the types of matters that it could not investigate.

The complainant complained to the JACO that he was unhappy about the way in which the JCIO had handled his case and, in particular, that the JCIO appeared to have dismissed his complaint on the basis that it was outside the 3 month-time limit without giving him the opportunity to provide reasons for the delay.

The JACO noted that in the covering letter, the JCIO did not explicitly state what part of the appendix was relevant to the concerns raised by the complainant. However, the JCIO confirmed with the JACO that the concern raised by the complainant would fall within the realm of judicial discretion and said it is up to the Judge what information he discloses to the parties in the course of the proceedings. It further confirmed that it would ultimately fall to be rejected as it concerned the Judge's decision and case management and would not raise a matter of misconduct.

The JACO found that it was unfortunate that the complainant came away with the wrong impression that his complaint had been rejected on the basis that it was out of time. However, he acknowledged the JCIO receives a large number of complaints which fall to be rejected on the basis that they do not contain allegations of misconduct and was satisfied it was a reasonable and proportionate step to issue standard letters explaining the JCIO's remit and that the complaint had been rejected. The JACO was satisfied that the JCIO's standard document was a comprehensive one that helpfully set out the types of complaints that the JCIO can and cannot look at, but raised concerns that due to the very individual nature of the complaints made, some complainants are left confused as to what aspect of the document relates to the specific complaint that they have raised. In this particular case, he said it might have been helpful if the JCIO had provided further information in its covering letter to the complainant to explain that his complaint that the judge gave his ex-partner a private email address would not amount to misconduct and the reasons why. The JACO did not, however, believe that the fact it did not do so this amounted to maladministration. He took into account that the JCIO's covering letter to the complaint invited him to call the JCIO's office if he did not understand anything in the correspondence; but that the complainant did not do so.

Overall, the JACO did not uphold the complaint as he was satisfied that the JCIO followed an appropriate process but concluded that the matters the complainant had raised could not be accepted for investigation as they did not contain an allegation of misconduct and were therefore outside of its statutory remit.

Case Study 3 (JCIO)

The complainant appeared before a Circuit Judge, as a Defendant, in Criminal proceedings. He subsequently complained to the JCIO about the Judge's alleged conduct. His complaint included that point that the Judge had spoken to him in a sarcastic manner and that he had ridiculed him.

The JCIO agreed to investigate this point further by listening to the recording of the hearing in order to verify what had happened. The JCIO subsequently dismissed the complaint under Rule 21(g) of the Judicial Conduct (Judicial and other office holders) Rules 2014 on the basis that it was misconceived as the caseworker did not hear any instances where the Judge spoke in a sarcastic tone or ridiculed the Defendant. The caseworker concluded that the Judge spoke in a calm manner and that his tone had been normal.

The complainant complained to the JACO that the JCIO had not adequately investigated his complaint and that it should have sought input from him during its investigation process.

The JACO upheld the complaint about the adequacy of the JCIO's investigation as he found that the JCIO listened to the recording of the wrong hearing in order to verify the complaint. The proceedings involved numerous hearings including a sentencing hearing. The JCIO has acknowledged that it did not listen to the recording of the hearing in which the complainant raised concerns about the judge speaking in a sarcastic manner, despite the complainant providing the JCIO with the date of that particular hearing. The JACO saw no other evidence to indicate that any further consideration was given to this point, other than purportedly listening to the recording to verify whether it happened. The JACO concluded that this amounted to maladministration and he directed that the JCIO look again at this particular point. He formally set aside the JCIO's decision using his powers under Section 111(5) of the Constitutional Reform Act 2005.

Case study 4 (JAC)

This case concerned a Selection Exercise in which the JAC's guidance said that candidates applying for the post must be of high calibre and exceptional ability, with the potential to progress to the High Court. Candidates were informed that they would be expected to submit a statement of suitability detailing how they demonstrated the Skills and Abilities: Legal and Judicial Skills, Personal Qualities and Working Effectively. Candidates were informed that shortlisting would be by way of a paper sift and those successful in the paper sift would be invited to a selection day.

A candidate in this Selection Exercise (an Upper Tribunal Judge) complained to the JACO that there was maladministration in the JAC process because the sift panel:

- failed to make a decision based on the evidence before it and wrongly used its own preconceptions about the work of the Upper Tribunal which were indicative of unconscious bias; and
- had not taken sufficient steps to brief themselves on the jurisdiction of the Upper Tribunal and as a result had wrongly categorised the examples he provided as simply determining questions of fact and applying established case law.

The panel concluded that this candidate had not provided sufficient evidence to meet the requirements of the post and he was not invited to progress to the next stage of the selection process. The feedback included the point that under Legal and Judicial Skills, the candidate did not provide evidence of work to demonstrate the required level of complexity for the relevant criteria, as distinct from applying established case law to a given set of facts or determining questions of fact.

The JACO did not uphold this complaint as he was satisfied that sift panel gave adequate consideration to the candidate's self-assessment and the leadership judge's comments and gave the reasoning for its decision that he had failed to provide sufficient evidence for Legal and Judicial Skills. The JACO was satisfied that the JAC's decision not to invite this candidate through to the next stage of the process was consistent with the score he was awarded at the sift stage.

The candidate told the JACO that the examples he had provided were test cases involving complex issues of law and had a precedential value and yet the panel failed to grasp the evidence and wrongly concluded that the examples involved applying case law to a given set of facts or determining questions of fact. While the JACO accepted that the candidate was surprised that the selection panel assessed his example as failing to provide sufficient evidence to meet the Legal and Judicial Skills it was not within the JACO's remit to question or challenge the decisions reached by the sift panel or to assess the strength of the candidate's examples himself, but

rather to assess whether there was any maladministration in the process that was followed. In that respect, there was no evidence that the sift panel failed to take into account all the evidence when it assessed the information available to it at the sift stage.

In coming to this decision, the JACO noted that the sift panel was made up of both Lay and Judicial members who had undertaken suitable training to qualify them to assess a candidates' statement of suitability and to award an overall score. He was satisfied that the JAC carries out quality assurance checks throughout each selection process to ensure proper procedures are followed and all stages of recruitment are free from bias. In addition, there was moderation process in this selection exercise to ensure that outcomes were consistent across panels.

The candidate made the point that the panel should have briefed itself on the jurisdiction of the Upper Tribunal to ensure they fully understood the complexity of his examples. However, in its response the JAC explained that the panel will only look at the information available on the application and that the onus is on the candidate to explain how their example meets the requirement and not to rely on the panel's pre-conceived knowledge of any jurisdiction. The JAC said that this approach supports an evidence based application so that it is fair to all candidates. The JACO was satisfied that this approach was reasonable and allows the JAC to carry out a paper-sift exercise that effectively shortlists candidates based only on the strength of the examples provided in the self-assessment and comments received from the leadership Judge.

Case Study 5 (Tribunal)

The complainant had been the Claimant in long running Tribunal proceedings. He subsequently complained to the President of an Upper Tribunal about the actions of the Tribunal Judge who heard his case. Part of his complaint about the Judge's actions was that he described his Tribunal bundles as "diabolical" and "unacceptable" and said there was no excuse as the complainant was meant to be intelligent. The complainant further said he felt belittled and ridiculed by the judge and that the judge took no account of his mental health disability.

The President dismissed part of the complaint under Rule 34(b) of the Judicial Conduct (Tribunal) Rules 2014 on the basis it was about judicial decisions and case management and raised no question of misconduct. He investigated the outstanding points by seeking comments from the Tribunal Judge, the Court Clerk who was present at the hearing, the Respondent's counsel and the Claimant's counsel. The President subsequently dismissed that part of the complaint under Rule 34(g) on the basis that the complaint was untrue, mistaken or misconceived.

The complaint to the JACO included the points that the President:

- did not address the part of his complaint about his mental health disability and that he should have been treated differently by the Judge in accordance with the ETBB; and
- only sought comments about the Judge's conduct from legal professionals and not lay third parties.

The JACO did not uphold the complaint as he was satisfied that the President followed the correct processes when he investigated the matter and concluded that the points the complainant made in respect of the Tribunal Judge's conduct were dismissed under the provisions of Rule 34 of the Judicial Conduct (Tribunals) Rules 2014.

The complainant said he should have been treated differently by the Judge due to his disability in accordance with the ETBB. The ETBB is issued by Judicial College as a guide for judicial office holders on equal treatment in respect of such matters as race, belief systems, children, disability, women, and sexual orientation. However, it does not form part of the regulated disciplinary function. The JACO did not uphold this part of the complaint as he found that:

- the President was only required to investigate complaints under the Judicial Conduct (Tribunal) Rules 2014. There was no requirement on the President to find whether or not the Tribunal Judge has complied with the guidance in the ETBB, but rather to determine whether his actions amounted to misconduct which would require a disciplinary sanction;

- the President considered the complaint and sought comments from the Tribunal Judge and from third parties. He concluded that the Tribunal did have regard for the complainant's disability and that he had referred to it in his judgment but had ultimately concluded that fairness had to be done to both sides of the litigation. The President ultimately rejected the complaint that the Tribunal Judge had belittled the complainant and not taken his disability into consideration under Rule 34(g) on the basis that it was untrue, mistaken or misconceived; and
- the President further explained to the complainant that he could not consider a complaint about the Tribunal Judge's judicial decisions, which would encompass how he dealt with the complainant's needs in terms of his disability, and that any challenge to a judicial decision could only be made by way of appeal to the Court of Appeal in accordance with the Upper Tribunal's orders and the time limits prescribed. The JACO was satisfied that this was reasonable.

The other aspect of the complaint to the JACO was that the President's investigation was only "half complete" as he only sought third party comments from "legal professionals" and not from the complainant's family members who were present at the hearing. The President sought comments from the Court Clerk, Counsel for the Claimant, Counsel for the Respondent and the Tribunal Judge. None of the comments received supported the complainant's view that the Tribunal Judge's actions amounted to misconduct. Rule 36 provides for the President to consider any source of independent evidence to help to verify the facts unless it is disproportionate in all the circumstances. The President told the JACO that he only became aware that the complainant wanted him to contact his family members at a late stage when he had already made his enquiries and was in the process of drafting his final response to the complainant. He further explained that in the Tribunals there is no record of who observes the hearings and that the complainant had not informed him at the outset that there were other witnesses he would like to be approached for comments.

The President said that he had carefully considered whether to approach them for comments at that late stage but concluded that it was not necessary as it was unlikely that doing so would assist him in determining the complaint, whilst accepting that any comments received would undoubtedly support the complainant's view. The JACO was satisfied that the President gave consideration to whether it was necessary to seek comments from the complainant's family but concluded that, in the particular circumstances, it would not assist him.

Overall, the JACO was satisfied that the President investigated the complaint in accordance with the prescribed disciplinary procedures and that there had not been any maladministration in his investigation.

Case Study 6 (Advisory Committee)

The complainant is a serving Magistrate who had previously made a complaint to the Advisory Committee about another magistrate's alleged bullying conduct towards him.

The Chair of the Advisory Committee asked a Conduct Panel to convene to consider the complaint. The Conduct Panel met and heard evidence from the complainant, the subject of the complaint and a legal adviser and a magistrate who had been present at the time of the alleged misconduct. The Conduct Panel issued a report to the subject of the complaint as required under Rule 90 of the Judicial Conduct (Magistrates) Rules 2014. The Advisory Committee subsequently wrote to the complainant and said that while the panel accepted his complaint was genuine, taking all the evidence into account it found that there was no actual bullying or harassment and therefore no misconduct.

The complainant asked the JACO to review the Advisory Committee's handling of the complaint that he had made and specifically complained that:

- the Conduct Panel did not allow him to give his evidence in full. They fired questions at him and did not allow him to finish his answers. The cross-examination technique employed was unfair;
- the Conduct Panel consisted of three white people and the Deputy Justice's Clerk appointed to assist the panel was also white. Given that his complaint included an allegation of racism at least one member of the panel should have been from an ethnic minority background to ensure a fair and balanced panel; and
- Rule 79 states that the Conduct Panel must prepare a report setting out the details of the complaint, a summary of the evidence presented, findings fact, a full explanation of the panel's reasoning and a clear statement of its recommendations. However, when he received the decision, the panel report considered of only two very short paragraphs and it did not give a full explanation of the panel's reasons or the findings of fact made.

The JACO did not uphold the complaint as he was satisfied that the Advisory Committee investigated the complaint in accordance with the relevant legislation and guidance and that there was no maladministration.

The JACO considered the points made about not being able to adequately give his evidence to the panel but was satisfied that the conduct panel provided him with a sufficient opportunity to provide his evidence:

- the Conduct Panel was provided with a copy of the written complaint which was a detailed statement that included 16 points of complaint against the other magistrate;

- Rule 63 provides scope for the conduct panel to take evidence from “any other person”. The panel made the decision to hear evidence from the complainant. The transcript confirmed that he gave evidence to the panel for almost an hour; and
- the questioning was inquisitorial and probing and the panel structured the questions by asking the complainant various questions about the statement he had made in his written complaint. The JACO was satisfied that the panel provided the complainant with the opportunity to provide further information or clarify any matters. The panel also provided him with an opportunity at the end of the panel’s questions to add any further information he wanted to provide.

In terms of his complaint about the constitution of the Conduct Panel, the complainant told the JACO that the panel of three was made up of only white members and that he expected to see at least one member from an ethnic minority background given that his complaint included an allegation of racism. Rule 53 says that the conduct panel must be comprised of three members drawn from the Advisory Committee. The supplementary guidance associated with Rule 53 further says that the Panel should normally consist of a Chairman who may be the Chairman of the Advisory Committee or the Chairman’s nominee, at least one member from a different bench and one member who is a non-magistrate member of the Advisory Committee. The Advisory Committee confirmed that the constitution of the Conduct Panel met these particular requirements. The Deputy Secretary confirmed that the complainant did not express any concern regarding the composition of the panel to him or to the conduct hearing panel members at the time. He said he would have considered any representation he had to make in this regard. He further confirmed that enquiries were carried out as to whether one ethnic minority member of the Advisory Committee was able to sit on the panel but that unfortunately he was unable to do so. The JACO was satisfied that the constitution of the Conduct Panel met the requirements set out in the relevant legislation and guidance. While he appreciates the value of having a diverse magistracy and also that ethnic minority magistrates may have more confidence in the disciplinary process if they can see that the makeup of those considering such matters is similarly diverse, it was clear that the Deputy Secretary was mindful of the sensitivities surrounding this complaint and therefore sought to identify an ethnic minority Advisory Committee member to sit on the Conduct Panel. The JACO found that the fact he was unable to do so was perhaps unfortunate but was not maladministration.

The complainant also made the point that the Deputy Secretary who assisted the conduct panel was also white. The Rules state that the Secretary’s role is only to advise the panel on the application of the Rules but that they are not a member of the panel and may not take part in the panel’s deliberations on the merits of the case. The JACO was satisfied that the Deputy Secretary’s role was limited to only advising the panel on the

application of the rules and that he played no role in the decision. The JACO found that this was entirely reasonable.

Finally, the JACO did not uphold the complaint that the decision the complainant received from the Advisory Committee did not give a full explanation of the panel's reasons and did not meet the requirements of Rule 79:

- Rule 79 states that the Panel's report must include: details of the complaint, a summary of the evidence presented, findings of fact made by the conduct panel, a full explanation of the panel's reasoning; and a clear statement of its recommendations. The JACO was satisfied that the panel's report met the requirements of Rule 79;
- Rule 83 says that the Conduct Panel must send a copy of its report and note of the hearing to the magistrate complained about and invite their representations on the report. The Rules do not, however, provide for the individual making the complaint to be sent a copy of the Conduct Panel report or given an opportunity to comment on it;
- in terms of the information provided to the person making the complaint about a magistrate, Rule 90 says that if a complaint is dismissed the Advisory Committee must inform the complainant of its decision. In that respect the Advisory Committee wrote to the complainant and informed him of the outcome of the complaint. He said that while the panel found his complaint to be genuine it had found that there was no actual bullying and harassment, and accordingly no "misconduct" on the other magistrate's part. The Deputy Secretary also acknowledged that this has been a difficult time for the complainant and said that the Bench Chairman would be in touch to offer some pastoral support; and
- the JACO was satisfied that the information provided to the complainant was consistent with the conclusions set out in the Conduct Panel's report and consistent with the requirements of the relevant legislation and guidance. He did not therefore not identify any maladministration.

Annex C**Summary of Performance against Business Plan targets**

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

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

PT 1 – to acknowledge receipt of all new complaints and correspondence from complainants, within 5 working days of receipt (98%).	Not Achieved (97%)
PT 2 – to deal with 90% of all correspondence received within 15 working days of receipt.	Achieved (94%)
PT 3 – when a preliminary investigation is required to establish if the potential complaint is within the JACO’s remit. We will conclude this evaluation and provide a full reply within 30 working days/6 weeks, in 90% of cases.	Achieved (99%)
PT 4 – when a case is ready for investigation we will aim to keep all complainants fully informed on a monthly basis in 98% of cases.	Achieved (99%)
PT 5 – we will publish our performance against these indicators in our Annual Report and on our website.	Achieved

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; and</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 to ensure that our staff maintain a high level of skill in Complaints Handling and Investigations.</p>	<p>All Achieved</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>Achieved</p>
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Annex D**Forecast and Actual Expenditure**

	FORECAST	ACTUAL
Staff costs and salaries	393,287	410,125
Office expenditure, Accommodation, Training, IT Services, Service costs and Miscellaneous	18,344	6,743
Legal costs	33,347	17,112
Total expenditure	444,978	433,980

Annex E

Statistical Data 2013/2014 – 2019/2020

Financial year	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Cases determined	63	92	70	63	79	88	84
Conduct (JCIO, Tribunal, Advisory Committee)	23 upheld/ partial upheld 30 not upheld	25 upheld/ partial upheld 65 not upheld	10 upheld/ partial upheld 59 not upheld	18 upheld/ partial upheld 42 not upheld	8 upheld/ partial upheld 65 not upheld	24 upheld/ partial upheld 55 not upheld	17 upheld/ partially upheld 64 not upheld
Appointment (JAC)	2 upheld/ partial upheld 8 not upheld	2 not upheld	3 not upheld	3 not upheld	6 not upheld	9 not upheld	1 upheld/ partially upheld 2 not upheld
JACO's Time (Days per week)	3	3	3 days (until 25/01/16) 2 days (wef 26/01/16)	2	2	2	2
Staffing	9 (8.4 FTE)	8 (7.5 FTE)	9 (wef 05/08/15) (8 FTE).	9 (8 FTE)	9 (8 FTE)	9 (8 FTE)	9 (8 FTE)
Budget Forecast ¹⁴	513,000	445,000	453,000	412,000	418,000	423,000	445,000
Actual spend	504,000	401,000	413,000	373,000	403,000	409,000	434,000

¹⁴ Budget figures rounded to the nearest £1,000.

