

Annual Report 2020-21



Judicial Appointments & Conduct Ombudsman

Annual Report 2020-21

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



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Contents

The Judicial Appointments and Conduct Ombudsman	7
Foreword	9
Performance	10
Complainants and stakeholders	32
Corporate Governance	36
Annexes	41
A 2020/21 Statistics	42
B Case Studies	45
C Summary of Performance against Business Plan targets	62
D Forecast and Actual Expenditure 2020/21	64
E Statistical Data 2014/15 – 2020/21	65

The Judicial Appointments and Conduct Ombudsman

The Judicial Appointments and Conduct Ombudsman (JACO) is Douglas Marshall. He was selected following an open competition and appointed in March 2021 by Her Majesty the Queen on the Lord Chancellor's recommendation. He replaced Paul Kernaghan CBE QPM who had been appointed until January 2021 and whose appointment was extended until the end of February 2021.

The JACO Statutory Remit

The JACO is a Corporation Sole who acts independently of Government, the Ministry of Justice (MoJ), the Judicial Appointments Commission (JAC) 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.

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. 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. Collectively these are referred to in this report as “Investigating Bodies”¹.

The JACO generally requires that people have concluded their dealings with the Judicial Appointments Bodies or Investigating Bodies before he will consider a complaint.

¹ In the past the JACO Office has referred to the JAC, the JCIO, Tribunal Presidents and Advisory Committees as “First-Tier Bodies”. It has found that this phrase has inadvertently given the impression that the JACO acts as a “Second-Tier” route of appeal. For this reason the terms “Judicial Appointments Bodies” and “Investigating Bodies” have been used instead.

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, but not as a result of any failure to be appointed).

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 first Annual Report, having taken up office on 1 March 2021. I am in a position where I am reporting on a year's work by my organisation despite only having been in office for one month of the period the report covers. However, the statistics, set out later in this report, provide a comprehensive overview of the workload managed by my office over 2020/21 and enable me to express my initial views.

The nature of the JACO investigation function made it inevitable that I inherited a number of Paul Kernaghan's cases at various stages of investigation which it fell to me to determine, based on my views regardless of any findings that Paul Kernaghan might have been minded to make. I would like to acknowledge Paul Kernaghan's work and the sensible and balanced approach he took in determining cases, exemplified both in those cases and the contents of this report.

I am very grateful to those who took time in my early period in office to assist in my introduction to the JACO post, enabling me to establish appropriate relationships with the MoJ and bodies that fall within my remit. I am grateful for the time and effort colleagues have devoted to increasing my understanding of their roles and relevant complaints processes.

It is vital to public confidence in the judicial system that the right people are appointed and there are fair and robust systems in place for dealing with concerns that those in office have not conducted themselves appropriately, without compromising the principle of Judicial Independence. My role is critical to ensuring the robustness of those processes and my initial impressions are consistent with my predecessor's views contained in his last Annual Report that the incidence of maladministration is low. Judicial appointments currently give rise to very few complaints and this suggests the ongoing work of the JAC is delivering an appointments process which is perceived by most to be both fair and robust. The incidence of maladministration in the Judicial Conduct process has also been low.

I am however aware that public bodies have faced unprecedented challenges in dealing with the COVID-19 crisis and the fallout may take some years to unwind, especially given anticipated controls on public expenditure. My office is not immune to this and will endeavour to provide an effective service.

I do not doubt that keeping maladministration levels low will be a challenge and I will try to assist by looking to engage when there appear to be process problems and by looking to put complainants at the heart of the complaints process.

Douglas Marshall

Performance²

This chapter provides information about the extent to which the JACO Office has met its targets and the outcome of complaints made to the JACO.

Most of the information provided relates to issues which caused the JACO to find maladministration or express concerns about Investigating Bodies' processes or the JAC. This needs to be seen in the overall very low incidence of maladministration.

The JACO remit

The justice system is, in broad terms, concerned with determining disputes, or questions of guilt in criminal matters, and providing the appropriate redress and punishment. It is always likely that there will be a degree of dissatisfaction amongst parties to cases about what has happened.

Judicial Appointments

The Constitutional Reform Act 2005 enables the JACO to consider complaints about the Judicial Appointments process from candidates for judicial office who claim to have been adversely affected by maladministration in the way in which their application for appointment, and/or subsequent complaint was handled. The JACO determined 8 complaints about the Judicial Appointments process in 2020/21. All related to the actions of the JAC, including its delegated investigation function³.

Judicial Conduct and Discipline

The vast majority of JACO work and enquiries to the JACO Office relates to his Judicial Conduct remit. The title "Judicial Appointments and Conduct Ombudsman" is frequently seen as implying a far wider role than the JACO's very narrow statutory remit, described on pages 7 and 8 and set out in JACO complaint literature. The JACO Office is regularly contacted – primarily by e-mail since the COVID 19 crisis – by people concerned about issues arising from cases in which they have been involved. This may include observations about those involved with the cases in question, including lawyers, HM Courts and Tribunals Service staff; and the actions of Judicial Office Holders. Such matters may include allegations that, in summary, decisions could only be reached by the Courts either acting inappropriately or condoning inappropriate actions by those involved in the case.

2 Throughout this report (including the Annex B Case Studies) those involved are referred to as "he". This is purely to assist anonymity.

3 The Constitutional Reform Act 2005 also enables candidates for Judicial Office to complain about alleged maladministration by the Lord Chancellor, the Lord Chief Justice or the Senior President of Tribunals in aspects of the Judicial Appointments process and subsequently ask the JACO to consider their concerns. There were no such complaints to the JACO in 2020/21.

Such views are usually felt very keenly. That does not mean that they raise a question of misconduct on the part of Judicial Office Holders involved in the case or issues that come within the JACO remit.

Staff in the JACO Office will not advise people that they cannot complain to the relevant Investigating Body but it is keen to avoid giving unrealistic expectations about what might be achieved by either doing so or pursuing matters to the JACO. In brief, the Judicial Conduct arrangements are intended to consider whether there are issues in Judicial Office Holders' conduct that might warrant the Lord Chancellor and Lord Chief Justice (or Lord Chief Justice's Designated Judge) imposing a disciplinary sanction; the JACO can review the process by which such matters were considered, but he cannot review the merits of decisions reached. The JACO is not an appeal mechanism and:

- a JACO determination that there has been maladministration in the process may have implications for the Judicial Office Holder originally complained against if it means that an investigation into his conduct is reopened. However, it does not mean that a Judicial Office Holder's actions might amount to misconduct; and
- conversely, the Courts may find that a decision reached in respect of a Judicial Conduct matter was flawed even if the JACO were to find that an appropriate process was followed.

Targets

The JACO Office has achieved all the targets set out in the 2020/21 Business Plan (see Annexes D and E). However, the JACO Office has not always met the requirement to reply to requests for information within the statutory period (see also "Corporate Governance").

Correspondence received

The JACO Office received 2,788 pieces of correspondence during 2020/21⁴. It included correspondence that raised issues which, although strongly felt, did not relate to the JACO remit or the remit of Investigating Bodies. The amount of correspondence received was 10% higher than the 2,510 received in 2019/20. This increase was not spread uniformly across the year:

- the JACO Office received 1,081 pieces of correspondence during the first six months of 2020/21 (a 16% reduction compared to the equivalent period in 2019/20). This period coincided with the initial period of lockdown and closure of Courts and public buildings; and
- the JACO Office received 1,707 pieces of correspondence during the second six months of 2020/21 (a 51% increase compared to the equivalent period in 2019/20).

The JACO Office estimates that more than 90% of the correspondence was sent and received electronically.

Approximately 65% of the increase in volume of correspondence in the second half of 2020/21 can be attributable to an eight fold increase in correspondence from less than twenty people sending at least eight e-mails a month to multiple recipients about matters which, although very strongly felt, were adjudged to fall outside the JACO remit and so did not warrant a response. This correspondence amounts to 18% of that received in the JACO Office over the course of 2020/21.

Enquiries and complaints received

The JACO Office received 1,181 enquiries and complaints during 2020/21. Of these:

- the vast majority of these came within the JACO Judicial Conduct remit; and
- approximately 55% were received in the second six months of the year.

⁴ It is not uncommon for people who contact the JACO Office to send multiple e-mails on the same business day. The analysis in this report treats all e-mails received in the same day as one piece of correspondence, regardless of the number of e-mails actually received on the same day.

Initial checks

The 1,181 enquiries and complaints included:

- correspondence from people who contact the JACO Office in respect of issues that could neither come within the JACO remit or might form the basis of a complaint that an Investigating Body could consider. 652 of the cases received were found to fall outside the JACO remit;
- 294 cases which fell within the JACO remit but which were concluded at the First “initial check” stage – in most instances by Officials in the JACO Office. They included:
 - correspondence from people who, at the time of complaint, were not in a position to complain to the JACO. This may be because they have not yet pursued a complaint to the relevant Investigating Body or because a complaint made had yet to be determined;
 - cases in which the complainant failed to articulate any concerns about an Investigating Body’s processes that the JACO could consider; and
 - cases in which the complainant has failed to provide the required “permission to disclose” (the JACO Office requires people to provide explicit consent to disclose their complaints to the Investigating Bodies whose processes have been complained about and for them to provide its papers to the JACO Office).

If it is possible that concerns expressed may lead to a complaint that the JACO can consider the JACO Office will ensure that potential complainants are aware of the JACO remit; will explore whether they wish to pursue concerns with the JACO in the light of that remit; and, if so, to explain what is needed. In addition, the JACO Office would, where appropriate, look to provide people whose correspondence fell outside of the JACO remit with information about organisations who might be able to assist with their concerns. This may include signposting to the relevant Investigating Body. In this context the JACO Office has expanded information that it provides in such circumstances to set out the limitations of the Judicial Conduct arrangements – including that they do not provide scope to review judicial decisions or case management. This is intended to assist people make informed decisions as to whether to approach an Investigating Body.

Preliminary Investigations

The Preliminary Investigation Process

Complaints that appear to come within the JACO remit are given a detailed initial evaluation to determine whether they might warrant a Full Investigation (referred to as a “Review” in the Constitutional Reform Act 2005). This is in accordance with section 110 of the Constitutional Reform Act 2005 which provides that a Full Investigation is required only if the following 3 conditions are met:

- that the JACO considers that one is necessary;
- that the complaint has been made in a form approved by the JACO; and
- that consideration of the complaint should not be concluded on the basis that it was made “out of time”⁵.

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. This is a key consideration as Full Investigations are very detailed and can take many months. There is no point in proceeding with such an investigation if there is no prospect that the JACO would find maladministration and uphold the case.

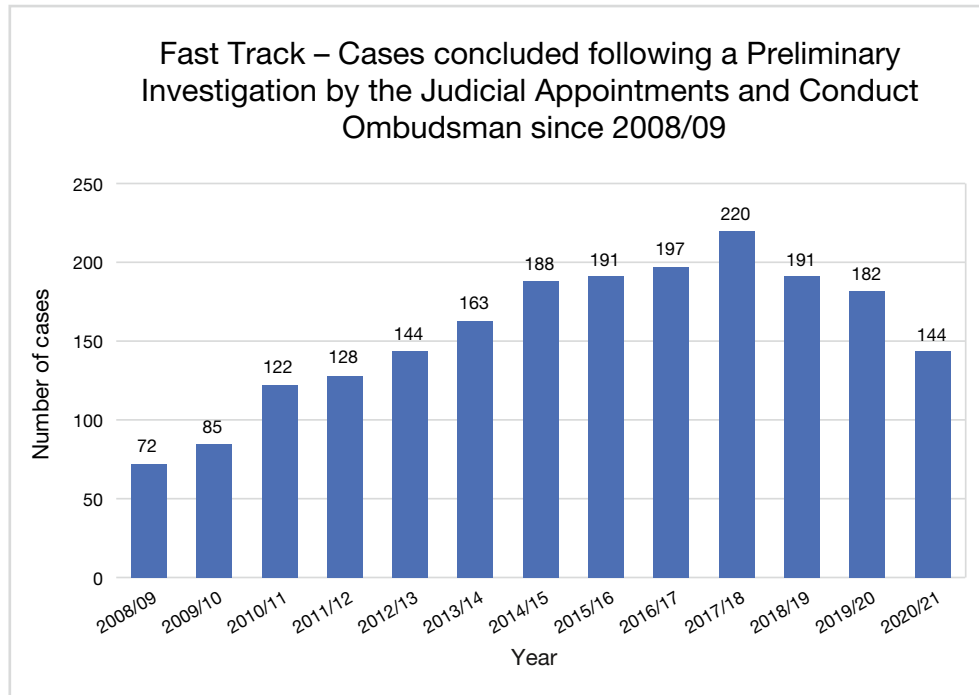
The Preliminary Investigation process is central to the JACO Office managing its workload within the allocated resources. It enables resources to be concentrated on the cases that require the most detailed consideration, as well as ensuring, as far as possible, that complainants are advised within a 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 achieved this in 98% of cases.

Outcome of Preliminary Investigations

The JACO considered 235 cases at the Preliminary Investigation stage. 144 were concluded at this stage and 91 were passed to the Investigating Team. The number of cases passed for further investigation amounts to 39% of those considered at Preliminary Investigation stage – a 7% increase compared to 2019/20. The main factor contributing to this increase was an increase in the number of JCIO cases passed to the Investigating Team.

⁵ Under sections 110(4) and (9) of the Constitutional Reform Act 2005 complaints to the JACO have to be made within 28 days of the complainant being notified of the decision reached by the Investigating Body or the JAC response to their complaint. This deadline can be extended at the JACO’s discretion.



7 cases concerning the Judicial Appointments process were considered at Preliminary Investigation and referred for further consideration. All of these concerned the actions of the JAC or a committee of the JAC. The JACO did not consider any complaints that related to the role of the Lord Chancellor, the Lord Chief Justice or the Senior President of Tribunals in the Judicial Appointments process.

Of the cases concluded at this Preliminary Investigation stage:

- all related to the JACO Judicial Conduct remit;
- 92 were about matters considered by the JCIO; 49 were about matters considered by Tribunals and 3 were about matters considered by Advisory Committees;
- the consideration of 141 cases were concluded as the JACO found there was no prospect of finding maladministration. This included 2 cases in which it transpired that the relevant Investigating Body investigation was not complete and 1 in which it transpired that the investigation complained about was not conducted under the regulated disciplinary function;
- the consideration of 3 cases were concluded as the JACO found that the JACO complaint had been made more than 28 days after the complainant had been notified of the Investigating Body decision and it was not appropriate, in all the circumstances, to accept the complaint “out of time”; and

- no cases were determined on the basis that they had not been made in a form that the JACO had approved.

The number of cases concluded at Preliminary Investigation stage was 21% lower than the 182 concluded at that stage in 2019/20, and the lowest figure since 2011/12. However:

- it largely reflected a reduction in the number of cases that needed to be considered at Preliminary Investigation stage. There was no significant backlog of cases awaiting consideration at this stage at the end of March 2021;
- it partially reflected an increase in the number of cases passed to the Investigation Team. This increased by 5 to 91;
- our analysis suggests that the length and complexity of cases concluded at this Preliminary Investigation stage increased. For example, compared to a sample of cases concluded at the equivalent stage in 2019/20:
 - the median length of reports increased from 5 to 8 pages and the average length of reports from 6 to 10 pages;
 - the simplest and most clear cut cases are those in which Investigating Bodies have rejected or dismissed the complaint made to them on the basis that there was clearly no question of misconduct and it was clear that they had followed the appropriate process in doing so. The proportion of such cases fell by 6% in 2020/21; and
 - there was a 4 fold increase in the number of cases concluded at Preliminary Investigation on which the JACO engaged with Investigating Bodies in respect of minor matters in the investigation process. Approximately 25 cases fell into that category in 2020/21.

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.

Issues considered in cases concluded at initial Preliminary Investigation

The main issue which the JACO considered in respect of cases concluded at initial Preliminary Investigation stage was whether the Investigating Body had followed an appropriate process in either rejecting complaints on the basis that they do not contain an allegation of misconduct or dismissing them on the basis that they are about judicial decisions or judicial case management and do not raise a question of misconduct. This included instances in which:

- it was argued that matters which were assessed as being about judicial decisions or judicial case management had demonstrated that a Judicial Office Holder had acted in a racist or otherwise discriminatory way, contrary

to the Bangalore Principles contained in the: “Guide to Judicial Conduct” (issued by the Judicial Office); the Equal Treatment Bench Book; or their Judicial oath; and

- one aspect of this was that the Guide to Judicial Conduct previously indicated that the JCIO would be able to investigate concerns that a Judicial Office Holder had failed to declare a conflict of interest but that this was changed in 2018 to state that the JCIO could become involved only if a case is considered by a higher court and that Court’s criticism of a Judge for failure to declare a potential conflict of interest was so serious as to raise a question of judicial misconduct.

Other issues considered in cases concluded at this Preliminary Investigation stage included:

- the process by which complaints alleging misconduct by Magistrate members of Advisory Committee selection panels were considered;
- circumstances in which Investigating Bodies could appropriately decline to respond to further correspondence. In particular, if the JCIO had told a complainant correspondence had finished and future correspondence that did not raise any new issues would not receive a response, did the fact that the automatic acknowledgement sent to new complaints promised a response mean that it was incumbent on the JCIO to respond to purportedly new complaints that were effectively restating matters that had previously been determined;
- questions as to whether it was appropriate, and consistent with the prescribed procedures, for the JCIO to generally require people to submit complaints via its portal – as opposed to sending them by e-mail (in considering such cases the JACO has not called into question whether the JCIO had justifiable reasons for putting the portal in place);
- whether it was appropriate for the JCIO to request medical evidence to support applications for reasonable adjustments whereby people could submit complaints via e-mail rather than via the portal; and
- questions as to whether it could be maladministration for an Investigating Body to respond to a complainant on white paper when it subsequently transpired that the complainant had indicated that he required that correspondence be sent on coloured paper, but the request was far from clear.

Issues which caused the JACO to express minor concerns in respect of cases concluded at Preliminary Investigation included:

- minor delays in handling cases;

- instances in which complainants appeared not to receive JCIO letters sent via the portal advising them that their complaint had been dismissed or rejected (the JACO accepted that isolated IT failures might occur and found that there was no maladministration in circumstances where the JCIO acted promptly and appropriately when they became aware that a complainant had not received a letter)⁶; and
- an Investigating Body making a further invitation for a complainant to particularise their concerns without allowing the time specified in the prescribed procedures to respond.

The JACO Office has also alerted Investigating Bodies to instances in which decision letters suggest or imply that people could contact the Investigating Body or the JACO by telephone at a time when those offices were unstaffed.

Full Investigations

The Full Investigation process

Following a preliminary investigation, if the JACO cannot be certain that he will not make a finding of maladministration and does not conclude investigations on the basis that complaints have been made “out of time” or not in a format approved by him, cases are referred for further consideration. In most of these cases, in accordance with section 112 of the Constitutional Reform Act 2005, the JACO conducts a Full Investigation. This involves detailed and comprehensive investigation of the cases and often requires engagement with large volumes of complex documentation. In order for the JACO to determine whether Investigating Bodies have followed an appropriate process, it is especially important for them to have maintained complete and accurate records of their consideration of complaints, and the evidence considered, so that these can be provided to the JACO Office. This is particularly the case now that many files are kept and provided electronically.

In determining cases that are passed for Full Investigation, the JACO takes into account complainants’ correspondence and liaises with other parties. The JACO considers that it is appropriate to give investigating bodies the opportunity to provide their observations on the process they have followed and to comment on possible findings emerging from investigations. The JACO assesses such responses critically, considering 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 Investigation is necessary, the JACO must refer reports, in draft, to the Lord Chancellor and either the Lord Chief Justice (in respect of Judicial Conduct

⁶ The JCIO has subsequently asked that complainants experiencing problems with the portal should contact them.

matters) or the JAC Chairman (in respect of Judicial Appointments matters) and to take account of comments made in finalising his views. There were 3 cases concluded in 2020/21 in which comments were received at this stage. In none of these cases did the comments cause the JACO to alter his view as to whether a process was maladministrative. In 1 case, the Lord Chief Justice's observation that concerns about a Judicial Office Holder's actions could not amount to misconduct caused the JACO to reach a different view as to whether the Investigating Body's decision should be set aside.

It has taken more time than in 2019/20 to complete Full Investigations. Approximately 45% of the 76 investigations concluded during 2019/20 took more than 6 months and the investigations into 5 concluded cases took more than a year⁷. This is significantly more time than in 2019/20, in which only approximately 25% of cases took more than 6 months and 4 cases took more than a year. There were 2 outstanding cases in which investigations had been ongoing for more than 12 months at the end of March 2021, although 1 of these had been put "on hold" for 3 months as the Investigating Body was giving further consideration to issues regarding the Judicial Office Holder's conduct.

At the end of March 2021 there were 34 cases with the Investigating Team in which draft reports had not been formally referred to the Lord Chancellor and either the Lord Chief Justice or JAC Chairman. This was an increase from 28 compared to the end of 2019/20.

There are a number of factors that have contributed to this increase:

- the complexity of the cases;
- the difficulties faced in adapting from conducting paper-based investigations to relying almost entirely on electronic documents;
- a moderate increase in the amount of time taken to receive responses to referred draft reports (although there has been a reduction in the number of cases in which it has taken over 4 months to receive a reply). Whilst the JACO requests that a response is received within 8 weeks, it is appreciated that those responsible for responding to draft reports have similarly had to adapt to new ways of working:
 - the proportion of cases in which a response was received in less than 8 weeks decreased from approximately 55% to 42% of cases⁸;
 - the proportion of cases in which a response was received in less than 12 weeks decreased marginally from approximately 81% to 80% of cases;

⁷ 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.

⁸ On the basis that a month is equal to 4 weeks, i.e. 20 working days.

- there were only 2 cases in which a response took more than 6 months, reflecting the effectiveness of a more structured system for monitoring and chasing outstanding responses; and
- once more, there have not been any concerns regarding the time taken to receive responses to draft reports in respect of Judicial Appointments matters referred to the JAC Chairman and the Lord Chancellor.

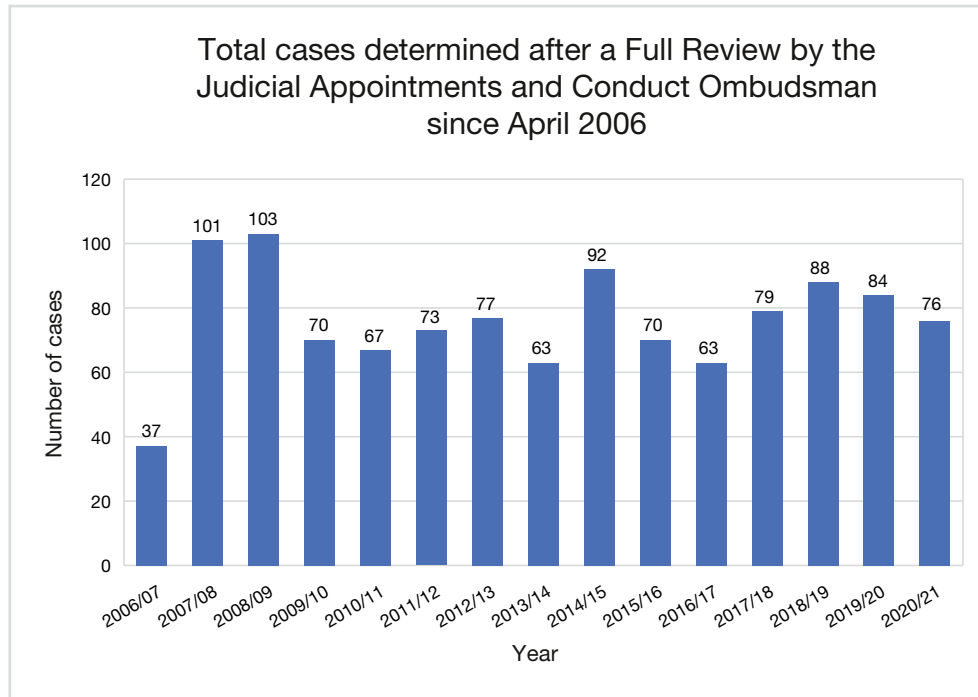
The JACO Office seeks to keep people whose concerns have been referred for further investigation informed about the progress of their complaint. This is generally done monthly, unless a complainant is advised otherwise. For example, there have been instances in which, after draft reports have been referred to the Lord Chancellor and either the JAC Chairman or the Lord Chief Justice, complainants were advised that there would be no update the following month as it would be unlikely that a reply would have been received.

The JACO Office issued updates in 99% of instances when they were due (the target was 98%).

Number of complaints determined

The JACO determined 76 cases following a Full Investigation during 2020/21 (this included cases in which an investigation had been ongoing at the end of March 2020). This is a decrease from 84 in 2019/20, but is broadly similar to the numbers determined in the years prior to that⁹.

⁹ Since 20010/11 the number of cases determined following a Full Investigation has been between 63 and 92.



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

- 8 fell within the JACO Judicial Appointments remit;
- 42 concerned matters considered under the Judicial Conduct arrangements by the JCIO. This included 2 cases concerning the JCIO's handling of concerns expressed about a Coroner's actions and 4 cases which involved consideration of the JCIO's handling of Judicial Conduct matters referred by an Advisory Committee;
- 18 concerned matters considered under the Judicial Conduct arrangements by Tribunal Presidents (or their delegates);
- 12 concerned matters considered under the Judicial Conduct arrangements by Advisory Committees. This included 4 cases in which the Advisory Committee referred matters for further consideration by the JCIO; and
- 6 cases were instigated by Judicial Office Holders (5 Magistrates and 1 JCIO case) who asked the JACO to review the process by which concerns about their actions had been considered. 1 case had been dealt with by an Advisory Committee, 1 case had been dealt with by the JCIO, and the remaining 4 had been dealt with by both an Advisory Committee and the JCIO.

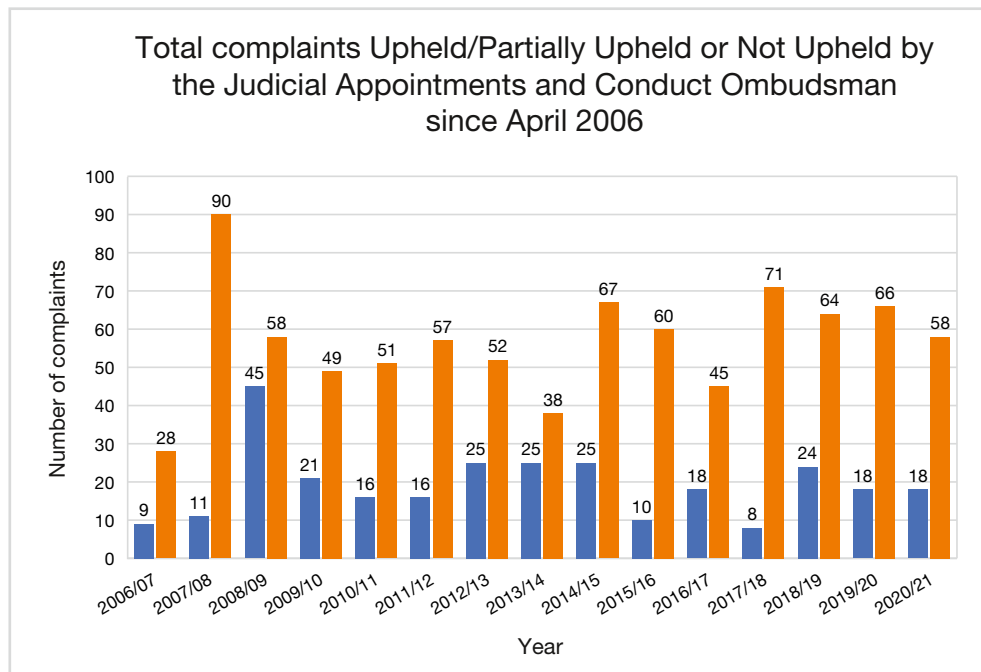
In addition:

- there were 8 instances during the year in which cases referred for further investigation were concluded without a Full Investigation being concluded as it became clear, at an early stage of the further investigation process, that there was no prospect of the JACO finding maladministration; and
- at the end of March 2021 there were 14 cases in which the JACO was awaiting responses to referred draft reports (the equivalent figure at the end of March 2020 was 15). This is usually the final stage in the JACO investigation process.

Outcome of Full Investigations

The JACO determined 58 cases which he did not uphold. This amounts to 76% of the cases determined following a Full Investigation.

The JACO upheld or partially upheld 18 cases. This amounts to 24% of the cases determined following a Full Investigation. These figures are comparable with those from 2019/20 in which the JACO upheld or partially upheld 22% of cases determined following a Full Investigation. Overall, the percentage upheld or partially upheld following a Full Investigation (24%) is slightly below the equivalent figures in previous years¹⁰.



¹⁰ The average percentage of cases upheld between 2010/11 and 2019/20 was 25% and has ranged from a low of 10% to a high of 40% in this period.

Of the cases which the JACO upheld, or partially upheld:

- 7 were in respect of investigations conducted solely by the JCIO;
- 1 was in respect of an investigation conducted solely by an Advisory Committee;
- 4 were in respect of investigations conducted by an Advisory Committee and the JCIO;
- 5 were in respect of investigations conducted solely by Tribunal Presidents (or delegated 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:

- 5 cases in which the JACO identified a failure to follow an investigation process that was consistent with the appropriate guidance before rejecting or dismissing complaints that were assessed as not being about misconduct:
 - 1 case in which the JCIO dismissed a complaint under Rule 21(a) without adequately considering the detail provided in the complainant's correspondence;
 - 2 cases, dealt with by Tribunal Presidents, which involved the implications of the judicial office holder complained about moving roles. In 1 case a Tribunal Investigating Judicial Office Holder addressed a complaint when he did not have jurisdiction to do so as the Judicial Office Holder was no longer a Tribunal Member. In the other, a Tribunal President erroneously suggested a complaint could not be pursued when the Judicial Office Holder moved from one Tribunal to another;
 - 3 cases, 1 dealt with by a Tribunal President and their delegate and 2 dealt with by the JCIO, in which complainants were not advised that their representations to extend the time limit for bringing the complaint did not constitute exceptional circumstances. In 2 of these cases there was no evidence to confirm that their representations had been considered;
 - 1 case dealt with by an Advisory Committee where the complaint was not considered by the Chairman or their deputy;
- 4 cases – 1 dealt with by the JCIO, 3 dealt with by an Advisory Committee and the JCIO involving the summary process and 1 dealt with by a Tribunal President – in which the JACO found that concerns about case management, poor communication and delay amounted to maladministration;
- 5 cases, 3 dealt with by the JCIO and 2 dealt with by a Tribunal President, in which aspects of the complaint were overlooked or misunderstood and were, therefore, not addressed;

- 1 case in which the JCIO took forward a matter which had been previously dismissed;
- 1 case in which the JCIO took forward an investigation into an unparticularised complaint;
- 1 case dealt with by a Tribunal President's delegate in which correspondence providing further particularisation of a complaint was overlooked;
- 1 case dealt with by an Advisory Committee in which it failed to warn the complainant that it would not respond to further correspondence;
- 1 case dealt with by an Advisory Committee in which a failure to signpost the complainant to the JACO contributed to a finding of maladministration;
- 1 case dealt with by an Advisory Committee and the JCIO in which a Conduct Panel failed to sufficiently probe the evidence relied on; and
- 1 JAC case in which the information provided about the use of a reasonable adjustment was insufficiently clear.

Other themes and issues emerging from investigations

The JACO's Judicial Appointments remit

The JACO concluded 8 cases regarding the Judicial Appointments process in 2020/21. This is an increase compared to 2019/20 in which only 3 cases were considered. 1 case was partially upheld. Given that the number of applicants that the JAC considers for appointment has been, in recent years, around 5,000 and in 2019/20 was closer to 8,000¹¹, it is notable that the number of complaints to this office is so small. Further, this is only the second appointments case that the JACO has either upheld or partially upheld since 2013/14.

Significantly, in the case that was partially upheld, the JACO acknowledged that whilst failures in the JAC's communications about its reasonable adjustment provisions amounted to maladministration, it was also the case that the complainant had not taken opportunities available to seek clarification. The JACO also commended the JAC's proactive approach in taking measures to prevent a recurrence of the issue.

The JACO Judicial Conduct remit

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

¹¹ According to the JAC's official statistics it considered 8,258 applications in 2019/20, 4,917 in 2018/19 and 5,125 in 2017/18.

There were 18 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 wrong hearing date; referring to another complaint; or being addressed incorrectly;
- could helpfully have:
 - explicitly included specific points of concern in its summary of the complaint;
 - better explained the decision made¹² or the information and correspondence considered. In 4 of these cases, the absence of reference to specific concerns in explaining the decision had the potential to give the impression that they had been overlooked;
 - alerted a complainant to issues it was facing in obtaining the papers necessary to consider their complaint to avoid giving the impression that their concerns were being considered in greater depth than was actually the case;
 - explained that the Investigating Body could not review judicial decisions or judicial case management to determine whether they were motivated by bias, 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;
 - provided greater clarity about the scope of the Judicial Conduct arrangements and the links with other complaint and/or appeal mechanisms; and
- failed to refer to the JACO's remit.

There were also 3 cases in which the JACO expressed concerns that the JCIO had not responded to correspondence received from complainants in circumstances where it would have been helpful to have provided further clarification.

¹² This includes a case in which the proforma letter issued by the JCIO when rejecting complaints as outside its remit did not provide the complainant with sufficient clarity on why their complaint was not being taken forward.

There were 10 cases in which the JACO expressed other concerns which fell short of maladministration. These included concerns about:

- delay or poor case management in 6 cases:
 - in 2 cases, the delay would have been sufficient to warrant a finding of maladministration. However, the JACO took into account: in one instance, that the complainants were regularly updated, the complaint was not allowed to drift and apologies were offered by the Investigating Body; and in the other, that the delay was the result of an understandable oversight rather than the result of poor case management;
 - in 1 case there was a delay on the part of the Tribunal administration in locating and providing the papers necessary for the Tribunal President's delegate to address the complaint;
 - 3 cases in which the JACO took into account the context of the COVID-19 pandemic and the impact that this had on Investigating Bodies;
- 1 case in which the JCIO's actions in taking forward a complaint about a Judicial Office Holder's facial expressions ran contrary to guidance then available on the JCIO's website;
- 1 case in which an Investigating Body had based its decision on a conflation of two points, but which did not impact the outcome of the complaint;
- 1 case in which a complainant was not initially provided with sufficient time to provide further particularisation of their complaint; and
- 1 case in which the JCIO was unable to make further enquiries to verify the facts in dispute given the imminent retirement of the judicial office holder complained about and the closure of courts at the onset of the COVID-19 pandemic.

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

- the interface between Judicial Conduct arrangements and critical appeal decisions;
- the scope of the JACO's investigations; and
- 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 seek any independent evidence that might help to verify the facts in dispute.

Redress

The JACO noted that the JAC had agreed to apologise to the complainant in the one case which he partially upheld regarding the appointments process.

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.

In 8 of the cases which the JACO upheld, or partially upheld, the maladministration related solely to the management or administration of the Investigating Body and did not raise a question as to whether the determination reached was unreliable. In a further 6 he found that the maladministration would, in itself and on the basis of evidence that the Investigating Body considered, have meant that a determination was unreliable but other factors or subsequent developments caused him to conclude that the determination should not be set aside.

In the remaining 3 cases, the maladministration raised issues which resulted in the JACO setting aside the relevant Investigating Body's decision, in whole or in part. Of these, 2 related to cases which had been considered by the JCIO. The other had been determined by an Advisory Committee. In 1 case the JACO set aside a decision to impose a disciplinary sanction and required the case to be reconsidered.

Section 111 of the Constitutional Reform Act 2005 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 2020/21, the JACO did not make any recommendations that monetary compensation be awarded.

In terms of other forms of redress:

- in 10 cases which were upheld or partially upheld in relation to the conduct process, the JACO found that an apology was appropriate redress. Of these, in 3 cases, the JACO did not recommend any redress as the Investigating Body had previously apologised. In 1 case the JACO did not recommend any redress as the Investigating Body had conveyed its sincere apologies in responding to preliminary enquiries from the JACO's office; and
- the JACO found that an apology was warranted in respect of matters which he did not uphold in 7 cases. In 4 of these he did not recommend any redress as the Investigating Body had previously apologised or had agreed to do so.

Preventing a recurrence of concerns identified during JACO reviews

Irrespective of whether the JACO makes a finding of maladministration, in order to prevent a recurrence of concerns identified during JACO reviews, the JACO considers making recommendations for systemic changes to assist Investigating Bodies in identifying and addressing concerns.

The JACO did not make any recommendations for systemic changes in respect of matters within his Judicial Appointments remit. The JACO would have made a recommendation in the case that was partially upheld, but was satisfied that the JAC had already taken action to address the issue raised.

The JACO made systemic recommendations in 7 cases which fell within his Judicial Conduct remit. These included observations:

- in JCIO cases about:
 - carefully assessing what information can be appropriately disclosed to complainants to explain the reasons for decisions taken when finalising complaints that have been considered by Investigating Judges or Disciplinary Panels;
 - the arrangements for managing cases in which it is asked to consider reports referred from Advisory Committees or Tribunals recommending disciplinary action to ensure they are not misfiled;
 - the wording of the JCIO's letter to complainants seeking further information.
- in Advisory Committee cases about:
 - informing complainants of the rule under which their complaint is dismissed or rejected, as well as explaining the reason for rejection or dismissal;
 - providing complainants with details of the JACO and his current contact information;
 - providing a written warning prior to a refusal to address any further correspondence from complainants;
 - ensuring any rejection or dismissal decision is made by an authorised decision maker in accordance with disciplinary legislation and guidance.
- in Tribunal cases:
 - the need, when apologies for delay are required, to provide complainants with details of steps being taken to avoid a repetition;
 - explicitly identifying the correspondence being taken into account when responding to complaints;

- the current requirement of the 2014 Rules to pass complaints to the current jurisdiction of the Judicial Office Holder complained about, irrespective of the role held when the matters complained of occurred; and
- keeping a full record of correspondence, in particular where attachments are included in email correspondence.

There were 2 cases, one dealt with by the JCIO and one dealt with by a Tribunal President, in which the JACO would have recommended that systems be put in place to ensure complainants are updated on a monthly basis. In both instances he was reassured that such processes were in place and that staff would be reminded of this requirement.

There was 1 case, dealt with by the JCIO, in which the JACO would have recommended that it carefully considered identifying cases as “urgent”, in submissions to the Lord Chancellor and Lord Chief Justice, which had been outstanding for over 18 months, in particular, in instances where the person complained about had been suspended from their duties. However, the JACO was satisfied that this need has been addressed in changes to the departmental policy and that, as a matter of general practice, cases that have been ongoing for more than a year are marked as urgent when they are referred to the Lord Chancellor and Lord Chief Justice.

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).

During 2020/21 the JACO responded to:

- approximately 25 pieces of correspondence sent in response to cases concluded following a Preliminary Investigation; and
- approximately 27 pieces of correspondence sent in response to cases concluded following a Full Investigation.

There were no instances in 2020/21 in which the JACO changed his mind as to whether further investigation was required or set aside his determination following a Full Investigation having considered such correspondence. There was 1 instance in which it became clear from correspondence received following a Preliminary Investigation report that the complainant’s concerns had been misinterpreted. In that case the JACO set aside his decision and considered the case afresh. He did not reach a different conclusion.

The JACO's Office also responded to 1 letter before Claim and 1 further piece of correspondence concerning litigation. There were no applications for Judicial Review outstanding at the end of March 2021, although the Ombudsman's Office had asked the Government Legal Department to pursue costs in respect of defending 2 unsuccessful applications for Judicial Review.

Analysis

The volume of correspondence, and the number of enquiries and complaints, received in the JACO Office during 2020/21 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 largely 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 Office's figures suggest that there was a decrease in the number of complaints that the JACO considered, but that the cases which he did consider were more likely to raise issues that warranted serious consideration:

- the number of cases which the JACO considered at Preliminary Investigation stage was 12% less in 2020/21, compared to 2019/20;
- the number of cases which the JACO determined without completing a Full Investigation (including cases initially passed to the Investigating Team) fell by 18% compared to 2019/20. The JACO Office's analysis suggests that the cases concluded at this stage were more complex and more likely to raise issues of concern than those determined at this stage in 2019/20;
- the number of cases in which the JACO passed to the Investigating Team after having taken the view at the Preliminary Investigation stage that he could not rule out a finding of maladministration rose to 91 in 2020/21. This represented 39% of the cases that the Ombudsman considered at that stage (in 2019/20 32% of cases considered at Preliminary Investigation stage were passed for further consideration); and

- the JACO upheld or partially upheld 18 cases in 2020/21, which was the same number of as in 2019/20. He also identified maladministration that rendered an Investigating Body's decision unreliable in 9 cases (which was also the same as 2019/20) but there were other factors which caused him to not set aside the decision in some cases. In reaching these conclusions, the JACO was commenting only on the Investigating Bodies' processes. 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 8% of the cases concluded at Full or Preliminary Investigation. The proportion of cases in which the JACO found maladministration which made the Investigating Body's determination unsafe amounts to approximately 4% of cases that the JACO determined within his Judicial Conduct remit;
- 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 5 cases which the JACO upheld or partially upheld in respect of Tribunal matters and the cases the JACO upheld in respect of Advisory Committee matters was also less than 1% of the annual caseload (although there are no published figures reporting the number of complaints regarding Tribunal members or Magistrates considered under the Judicial Conduct arrangements).
- 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 2020/21 it related to events during 2019/20. In that period the JAC considered over 8,000 applications for Judicial Office, of which approximately 90% were unsuccessful¹³;
 - the fact that this is only the second JAC case in which the JACO has found maladministration since 2013/14; and
 - the JAC was proactive in addressing the issue which resulted in the finding of maladministration.

¹³ See: <https://judicialappointments.gov.uk/wp-content/uploads/2020/10/diversity-of-the-judiciary-2020-statistics-web.pdf>

Complainants and stakeholders

The COVID-19 crisis

The COVID-19 crisis has necessitated significant changes in the way in which the JACO Office, and also the Investigating Bodies, whose processes the JACO can review, operates. The JACO and JACO Office staff have worked remotely for virtually the entire year. In addition, the JAC and Investigating Bodies have, in the vast majority of cases, provided documents electronically and JACO deliberations have largely been by reference to electronic documents.

The JACO Office appreciates that the fact that it has been unable to provide a full telephone service would have been frustrating for some complainants, and potential complainants, and there have been several pieces of correspondence expressing concern about this. Where requested, staff in the JACO Office will telephone people who make contact by e-mail asking to speak to someone about the JACO role and remit (information on the JACO website refers to this facility). The JACO Office made approximately 30 such call-backs in 2020/21, often following them up with written advice. It appreciates that this is not the equivalent of a full telephone service, not least because it is unavailable to those without Internet access.

The appointment of a new JACO

The Selection Exercise which led to the appointment of Douglas Marshall as the new JACO ran for most of the year. Staff in the JACO Office and the previous Ombudsman both spoke to candidates (and potential candidates) about the role and responded to queries arising from the process. They did not have any role in deciding who would be appointed.

Relationships with stakeholders

The JACO and the JACO Office have continued good professional working relationships with stakeholders – including the bodies that come within the JACO remit. This has been done whilst maintaining all parties' respective independence, including that the JACO has the right to conduct reviews in respect of matters that fall within his remit as he sees fit and to reach his own conclusions, based purely on his observations as to whether there was maladministration in respect of matters that fell within his remit. He also seeks to ensure that bodies complained against have a fair and appropriate opportunity to provide input to his investigations and will not issue critical reports without giving them the opportunity to comment.

One aspect of this is that there is a shared interest with stakeholders in improving the matters that the JACO oversees. With that in mind:

- staff in the JACO Office participated in a training day for Investigating Judicial Office Holders run by the President of the Employment Tribunals. This was a two-way exchange and enabled JACO Office staff to better understand the pressures faced by Investigating Judicial Office Holders within large Tribunals; and
- the JACO process may include making recommendations for systemic changes and pointing out errors. This may include matters which emerge during investigations but which are not covered in reports (possibly because the complainant did not raise them). 1 example would be the provision by Investigating Bodies of telephone numbers and an invitation for a complainant to telephone them at the point when the relevant Office was understandably closed on account of the COVID-19 pandemic).

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 for the first six months of each reporting year. The JACO provided the report for the period April to September 2020 in December 2020. It was also sent to the JAC Chairman.

In the period from April 2020 to February 2021 Paul Kernaghan had meetings with the JAC Chairman; an Upper Tribunal President; and Senior Officials in the JCIO and the MoJ. As part of his induction from 1 March 2021 Douglas Marshall met with two Tribunal Presidents as well as Senior Officials in the MoJ and the JCIO. At the end of March 2021 the JACO was in the process of organising meetings with other stakeholders.

Explaining the JACO remit

The JACO Office is aware from call-backs requested and post complaint correspondence received that many complainants remain unclear about the JACO's remit. It is not unusual for people to contact the JACO Office, especially in respect of Judicial Conduct matters, in the hope that the JACO remit is wider than it is or that the complaints process provides scope to review Judicial decisions or case management.

The JACO office has, therefore, become conscious of the continuous need to seek to communicate better what the JACO can and cannot do, in order to better manage complainants' expectations. Therefore it took steps in 2020/21 to manage expectations by expanding the scope of information provided to people who make contact about both the JACO role and the scope of the Judicial Conduct arrangements. In addition, work on a guidance leaflet was completed at the end of the reporting year. It will be published alongside corresponding updates to the website in 2021/22.

The general requirement is that complaints to the JACO are submitted in writing and that complainants provide permission to disclose their complaint to the relevant Investigating Body and for the Investigating Body to provide the appropriate papers to the JACO Office (the JACO Office has forms that have been designed to assist people in setting out complaints to the JACO – including providing the required “permission to disclose”). In addition, staff in the JACO Office may agree to meet complainants in order to assist them in setting out their concerns orally with a view to asking them whether a note taken during the conversation is complete and accurate. There were no such meetings in 2020/21 – either face to face or remotely.

Compliments and complaints received

The JACO Office is aware that there have been a number of instances in which the level of service provided (as opposed to concerns about the JACO’s decisions) fell below the level expected in 2020/21. The main issues which caused this to happen included:

- 16 instances in which correspondence was simply “missed”, leading to a delay in responding. A contributory factor in 4 of these was the time taken for post sent in by Royal Mail to reach the JACO Office;
- 2 instances in which clerical errors meant that cases were not progressed or completed reports not issued;
- 2 instances of errors in correspondence from the JACO Office; and
- 12 instances in which requests for information were not responded to within the specified statutory timeframe, or there was a delay in responding to requests for reviews of such decisions (see “Corporate Governance”).

The JACO Office has introduced checks designed to mitigate against the possibility that isolated pieces of correspondence will be simply missed in future.

The JACO and the JCIO Office also received compliments from complainants and others during 2020/21. These included:

- comments from 2 people who had been advised that their concerns fell outside the JACO remit and provided with information about the Judicial Conduct arrangements. The correspondents said that it was clearer what they could and could not do, and thanked the JACO Office for its common sense;
- comments from 4 people thanking the JACO and the JACO Office for the time and professional approach taken in investigating their complaint, including keeping them informed. 3 of these were from people whose complaints had not been upheld;

- 1 observation that the complaint was “gratified by how professionally JACO handled the following stages, including taking time to record my (reluctantly-made) complaint accurately over several ‘passes’ and regularly advising me of the future stages of work and approximate timetable for them – which I found very helpful”; and
- 1 comment thanking the JACO Office for its ongoing work on a complaint, which the complainant described as “so appreciated”.

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's Sponsorship and Finance Teams to discuss the Office's performance and financial position. Officials also participated in an MoJ group considering the impact of the COVID 19 crisis and associated changes in working arrangements on Arm's-Length Bodies and other groups discussing matters such as Risk Management, Security and Health and Safety. 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 has been no significant impact on the JACO role since the Brexit transition period ended.

Financial resources

The JACO Office continued 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 how actual expenditure compares with the budget. These controls enabled the key business targets to be met within the constraints of the budget agreed with the MoJ.

The JACO Office budget for 2020/21 was £454k, compared to £445k in 2019/20. The outturn expenditure was approximately £447k, an underspend of £7k. The JACO Office's outturn expenditure has been less than budgeted for 16 consecutive years. More than 95% of outturn expenditure was in respect of staff costs, including the Ombudsman's contracted remuneration of approximately £46k.

The JACO Office is based in MoJ accommodation. Its budget does not reflect the costs of occupying that accommodation and some associated services.

The outturn expenditure figure included approximately £12k in respect of legal fees, compared to the £20.6k budgeted. The JACO Office was aware that there were some invoices for legal assistance provided by the Government Legal Department during 2020/21 which had not been received by the end of March 2021.

The JACO Office did not make any ex-gratia payments during 2020/21.

The JACO Office budget for 2021/22 is £454k; there is no increase from 2020/21. As in previous years the unpredictable nature of the need for legal support services to respond to legal challenges made to the JACO's decisions is the single factor most likely to mean that the JACO Office's expenditure in 2021/22 might exceed that amount.

Staff resources

The JACO holds a public appointment; Douglas Marshall was appointed as the third JACO in March 2021. His term of office is for a period of 5 years.

There were no instances during 2020/21 in which the Lord Chancellor appointed a Temporary Ombudsman to consider specific cases.

The JACO Office has sought assistance from the Government Legal Department where necessary but has not engaged any other consultants or agency workers during 2020/21.

The structure of the JACO Office changed during 2020/21, although the number and grading of staff remains unaltered. It comprises two Band B Joint Heads of Office (one being the Business Manager and the other a Senior Investigating Officer); 5 Band C Investigating Officers (4.6 Full Time Equivalent) and a Band E Administrative Officer (see Annex C). All staff have been with the Office for at least 5 years and 4 have been with the Office since its inception in 2006.

JACO Office staff are Civil Servants, employed and appraised under MoJ terms and conditions, including the MoJ's "Reward and Recognition" scheme. All awards under that scheme are "benchmarked" with the Sponsorship Team to ensure consistency.

The JACO Office lost, on average, less than 3 days per member of staff to sickness during 2020/21.

The JACO Office made no compensation or exit payments during 2020/21.

Working arrangements resulting from the COVID-19 pandemic

The JACO office is based in the MoJ headquarters at 102 Petty France. Prior to the COVID-19 pandemic it encouraged flexible and remote working for all staff where this could be done without compromising the security of information held and the need to provide a “customer facing” organisation. During 2020/21 as a result of the COVID-19 pandemic and the subsequent lockdown the JACO staff worked exclusively away from the office, except for a small number of occasions when a minimal number of staff were required to attend the office. This impacted on the provision of a telephone service (see “Complainants and Stakeholders”).

The move to remote working necessitated by the COVID-19 pandemic created difficulties in the processing of “hard copy” post – such as that received via Royal Mail. This inevitably meant that it took longer than would have been the case for such correspondence to reach the JACO Office (a sample of JACO Office records suggests that 30% of this was received in the JACO Office more than a week after it was dated and over 10% more than four weeks after it was dated). The JACO Office is very grateful to staff in the MoJ Post room for securely forwarding such correspondence received to JACO Office Officials, which prevented far more serious delays in handling such post.

The JACO Office did not lose any days as a result of staff having the COVID-19 virus. 5 days were lost due to increased caring responsibilities as a result of the COVID-19 pandemic.

The JACO Office spent approximately £3k in respect of matters that would not have been incurred or shown on the JACO budget but for the COVID-19 pandemic. The majority of this was in respect of equipment needed to facilitate working from home on a full-time basis. Other expenditure included the cost of sending material by courier, some reprographic costs and the cost of posting letters and reports to people unable to communicate electronically.

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 BTEC Advanced Professional Award in Complaints Handling and Investigations. In 2020/21 JACO staff undertook training in Fraud Risk Assessment, Business Continuity Modelling and Protecting and Sharing Information.

Information Assurance

The JACO Office holds a range of personal information, some of which would be classed as sensitive personal information. This information is obtained and processed solely for the purpose of enabling the JACO to carry out his statutory functions under the Constitutional Reform Act 2005 and associated responsibilities, such as responding to requests for information under the Access Legislation.

The JACO Office is grateful for the Data Protection Officer support provided by Officials in the MoJ's Data Privacy Team.

The JACO Office has initiated a plan to destroy electronic records in accordance with its agreed Records Retention and Disposition Schedule, including ensuring that material that might be relevant to Independent Inquiries into Child Sexual Abuse and Infected Blood are retained. This work is ongoing. The move to remote working necessitated by the COVID-19 pandemic has meant that it was not possible to continue with the ongoing destruction of paper records.

The JACO Office is its own data controller. It came to light as a result of correspondence during 2020/21 that it needed to be separately registered as such, rather than being included within the MoJ's registration with the Information Commissioner's Office. This position has since been remedied.

There were 3 information breaches in 2020/21:

- in 1 instance a complainant who had requested an electronic copy of reports in his case was sent an electronic copy of reports relating to a different complainant of the same name;
- in 1 instance the JACO Office sent an e-mail containing very limited personal data to someone else who had previously corresponded with the JACO Office rather than to the intended recipient. This occurred as the JACO Office had not turned off the facility whereby Outlook predicts e-mail addresses based on previous correspondence. The 2 people had similar names and Outlook predicted the incorrect address. This was not noticed and so the e-mail was sent to an unintended recipient. Following this JACO Office staff were advised to turn off the facility whereby Outlook predicts e-mail addresses; and

- in 1 instance an internal JACO e-mail containing a complainant's personal data was sent to a member of HM Courts and Tribunals Service staff of the same name as a member of JACO staff who was the intended recipient. The e-mail was purged and JACO Office staff were reminded that the global address list contains many people of the same name and to ensure that e-mails are sent to the intended recipient.

The JACO Office took appropriate steps to report these matters.

As a data controller the JACO Office is responsible for responding to requests for information made to it under the Data Protection Act 2018, the Freedom of Information Act 2001 and associated legislation and guidance. This includes correspondence which is not explicitly a request for information but which the JACO Office interpret as one. The JACO Office considered 23 such requests during 2020/21 – including requests that decisions made be reconsidered. It is committed to disclosing whatever can appropriately be disclosed under the relevant legislation and guidance.

The JACO Office responded to 11 of the requests within the specified statutory time limits. There were a number of factors which impacted on the time taken to reply to such requests:

- responding to such requests can be a difficult, complex and time consuming process, including the scrutiny of a large volume of information and legislation and guidance that is not part of the JACO statutory remit;
- in 1 instance a request for information was missed because it was written in the context of what the complainant was seeking to achieve from the JACO complaint rather than as a direct request; and
- the fact that the JACO Office has been largely unstaffed has made this task more difficult in 2020/21 as it has been more difficult to access the large scale printing and reprographic facilities that may be required to process the requests.

Other Statutory and MoJ Requirements

The JACO Office has local procedures to comply with Health and Safety legislation and to ensure staff security, IT Security; and its own financial and risk management systems (including a Counter-Fraud strategy). Where appropriate these follow the relevant MoJ arrangements.

Annexes

Annex A**2020/21 Statistics****Breakdown of complaints received**

	Total number of complaints & enquiries received	Appointment-related cases received	Conduct-related cases received	Other enquiries received
APRIL	63	–	23	40
MAY	77	1	35	41
JUNE	90	–	41	49
JULY	92	1	39	52
AUGUST	87	–	26	61
SEPTEMBER	115	2	44	69
OCTOBER	114	–	40	74
NOVEMBER	113	–	50	63
DECEMBER	79	3	29	47
JANUARY	105	–	59	46
FEBRUARY	95	–	54	41
MARCH	151	–	82	69
TOTALS	Number of complaints & enquiries	Appointment related cases	Conduct related cases	Other enquiries received
	1,181	7	522	652

Breakdown of conduct complaints received by type of Investigating Body

Total Conduct related cases	Conduct cases relating to the JCIO	Conduct cases relating to Tribunals	Conduct cases relating to Advisory Committees
522	350	144	28

Breakdown of cases finalised

	Cases dealt with at 1 st level – ‘initial check’	Cases initially finalised at 2 nd level – ‘fast track’	Cases passed to Investigation team but finalised at 2 nd level – ‘fast track’	Cases finalised following a 3 rd level ‘full investigation’
Appointment (all relate to the JAC)	–	–	–	8
Conduct – relating to JCIO	198	92	4	38
Conduct – relating to Tribunals	80	49	3	18
Conduct – relating to Advisory Committees	16	3	1	8
Conduct – relating to Advisory Committees and JCIO	–	–	–	4
Total	294	144	8	76

Cases investigated, determined and finalised following a Full Investigation

	Not upheld	Upheld and partially upheld	Total
Appointment	7	1	8
Conduct – relating to JCIO	31	7	38
Conduct – relating to Tribunals	13	5	18
Conduct – relating to Advisory Committees	7	1	8
Conduct – relating to Advisory Committees and JCIO ¹⁴	–	4	4
Totals	58	18	76

¹⁴ In this Annex cases are treated as relating to an Advisory Committee and the JCIO if they were handled by both, regardless of the extent of JCIO involvement and whether any maladministration that the JACO identified relevant to the actions of the relevant Advisory Committee or the JCIO.

Annex B

Case Studies

Case Studies are provided to give a brief summary of the sort of matters that the JACO has considered whilst conducting Full Investigations, and to illustrate his approach in deciding whether or not to uphold the complaint.

They are extracts from Full Investigations designed to highlight only the points of interest. They do not necessarily show all the measures complained about in the cases in question.

Case Study 1 (JCIO)

In January 2019, the complainant attended a hearing before a District Judge at a Magistrates' Court where he was removed by security guards on the Judge's instructions.

The complainant initially raised concerns that the Judge had been prejudiced directly to the Magistrates' Court more than a month later and in March 2019, he was informed that the complaint should be made directly to the JCIO. The complainant submitted a complaint to the JCIO in April 2019, by which time more than 3 months had elapsed since the hearing date. This was relevant as the Judicial Conduct (Judicial and other office holders) Rules 2014 require the JCIO to reject complaints that are made more than 3 months after the latest matter or event complained of, with the proviso that complaints can only be accepted outside that timeframe in exceptional circumstances. If the JCIO rejects a complaint on the basis that it was made "out of time" it is required to give the complainant the opportunity to identify exceptional circumstances that might warrant accepting it.

In this case the complaint was not initially rejected on the basis that it had been made "out of time". Rather it was rejected on the basis that it did not contain an allegation of misconduct.

The complainant subsequently argued that the complaint was in remit and the Judge had shouted at him and been prejudiced by removing him from the court room without allowing him the opportunity to explain himself. Having considered the complainant's correspondence, the JCIO wrote to him explaining that the complaint fell outside the 3-month time limit which could only be extended in exceptional circumstances. It invited him to provide his reasons for the delay by a stated date or the complaint would automatically be rejected on the basis that it was out of time, with no further contact. The complainant did not respond by the deadline and the complaint was automatically rejected.

Some months later, the complainant wrote to the JCIO explaining that he had not received the JCIO's letter asking him to say why he had not complained sooner requesting his reasons for not having complained sooner and that technical difficulties at the JCIO had meant that he was unable to access the JCIO's portal in the 3 months following the hearing (the complainant said that he had been in communication with the JCIO's "technical department" about the portal problems in this time) but that they had sent an e-mail to the JCIO's general in-box on 12 April 2019. In a subsequent telephone conversation with the complainant, the JCIO indicated that it would contact him further 'if appropriate' but it did not do so.

As part of the investigation, the JCIO told the JACO Office that:

- it has the discretion to extend the deadline for providing out of time reasons but that such extensions would usually be requested on or around the deadline itself and the extension would be for 1 or 2 weeks whereas in this instance there had been no communication from the complainant for a number of weeks after the deadline; and
- it could not say for certain whether there were technical problems that had prevented the complainant from making a complaint within the three-month time limit and there were no records of any email communication from him at the purported time.

Having considered the evidence, the JACO partially upheld the complaint. Although he was broadly satisfied that the JCIO had followed an appropriate process in line with legislation and guidance, he was concerned that the JCIO could have better dealt with events after the complainant had submitted his out of time reasons and the JCIO had indicated that it would contact him further if appropriate.

The JACO was concerned that the JCIO could not say for certain whether it had considered the out of time reasons and there were no adequate records kept of telephone conversations with the complainant. He found that this amounted to maladministration. However, he was satisfied that the JCIO's decision was not unsafe because it had followed an appropriate process up to the point the complaint had been rejected as having been made outside of the statutory deadlines and the JCIO had explained that the reasons for the delay would not have warranted extending the time limit, and so the outcome would not have changed had they been provided within the deadline.

In redress, the JCIO agreed to write to the complainant and apologise for failing to explain why their complaint remained rejected on the basis that it had been made out of time.

Case Study 2 (JCIO)

The JACO received a complaint raising issues that the JCIO failed to carry out a proper investigation of his complaint. The complainant said that the JCIO dismissed his complaint by stating it was based on “supposition” and ignored the facts.

The complainant had raised concerns with the JCIO about the actions of a Judge in a Small Claims case. The complaint was wide-ranging but included the points that the Judge was flushed in the face, his eyes appeared glazed and that he seemed to be utterly confused about the purpose of the case, the parties in the case, and the papers before him. The complainant mentioned that the hearing was on a Friday afternoon shortly after lunch and a few weeks before Christmas. When the JCIO asked the complainant for more information about his complaint he responded and said that the Judge was not in a fit state to preside over the case but that it was not for him to say whether this was because of a medical issue or the influence of a substance.

The JCIO determined that the complaint fell to be dismissed under Rule 21 (a) which requires the JCIO to dismiss a complaint, or part of a complaint, if it is inadequately particularised. The JCIO concluded that the information which the complainant had provided did not enable it to consider the complaint further. The JCIO said it could not accept complaints based on supposition and that the complainant had failed to provide a clear and specific allegation of behaviour that, if true, could result in a finding of misconduct.

The JACO partially upheld the complaint. While he entirely accepted that the JCIO can only accept complaints that have been adequately particularised and that it cannot take forward matters based on supposition, on balance, he was persuaded that the complainant provided the JCIO with sufficient information that raised concerns about the Judge’s conduct (i.e. that he was under the influence of a substance), that if substantiated, might raise a matter of misconduct. The JACO was of the view that the JCIO complaint went further than supposition as the complainant spoke of the judge’s appearance (glazed eyes and flushed face) and that he appeared confused as to the papers and the case before him referred to the wrong witness and that he was not in possession of his faculties. He found that it was clear that one of the suggestions was that the Judge was under the influence of a substance.

Overall, the JACO was not satisfied that this matter had been adequately considered before being dismissed as not adequately particularised. He formally set aside the JCIO’s decision.

The complainant also raised some queries about the way the JCIO had summarised his complaint, stating that it had purported to quote him using quotation marks, but had amended or merged his words. The JACO found that the JCIO's summary was reasonable, even though there was 1 instance in which a JCIO quote was not totally accurate and that in some instances merging points meant that the full context was not provided. The JACO did not uphold this point of complaint but said that the JCIO should take care to ensure that quotes reflect the exact language used.

Case Study 3 (JCIO)

This Case Study concerns the JCIO's handling of a complaint about an incident in which a Judge was alleged to have assaulted a Defendant outside a court room.

The background is that the complainant (who was also the Defendant in the case in question) holds an autism passport, stating that he does not like to be touched, which he said had previously been shown to the court. There was evidence in the JCIO's file indicating that he had been in a distressed state outside the Courtroom. It was also agreed that the Judge came to see him on the concourse and that there was some form of physical contact between the two which the complainant found very upsetting. The Judge also told the JCIO that after the complainant had calmed down he had apologised and proceeded to have charges put to him.

The complainant later complained to the JCIO, alleging that the Judge had assaulted him and that he did not give the Judge permission to touch him and he did not know he was going to grab his arm. He indicated that his mental health worker was with him all the time and provided a witness statement. After seeking the Judge's comments the JCIO dismissed the complaint. Its comments included that the complaint was substantiated in that the Judge touched the complainant's arm but that his actions were a reflex in response to the complainant's distress, and would not constitute misconduct; that the Judge was unaware of any marker to the effect that the complainant should not be touched; and that the Judge had apologised.

In his JACO complaint the complainant said that a support worker had been with him all the time; that the JCIO had not investigated the matter thoroughly enough; and that it had taken the Judge's side. The JACO:

- found that it was appropriate for the JCIO to have sought the Judge's comments on the complaint;
- noted that the Judge accepted, on reflection that he should have asked more questions about the complainant's mental health when he went to see him outside the court room; and that his attempts to be sympathetic appeared to have exacerbated the position; and
- noted that the Judge's account of events differed from the complainant's in that he said that he had gently touched the complainant's arm whereas the complaint had suggested something more. He also said that he knew who the complainant was when he went to see him but was unaware of any marker regarding whether he should be touched and would not have done so if he had known of any such marker.

The JACO's comments about the JCIO's process included that:

- the judicial process can be stressful for all concerned and there will inevitably be instances in which cases do not progress as smoothly as desired. Judges are not immune from making mistakes and the Judge had accepted that he could have handled matters better. However, the question for the JCIO was not simply whether the Judge could have handled the case better but whether his conduct fell short of what could reasonably be required to a degree that might amount to misconduct warranting the Lord Chancellor and Lord Chief Justice imposing a disciplinary sanction;
- the JCIO's correspondence had recognised the possibility that the extent of contact might have been more than a gentle touch;
- it would have been open to the JCIO to seek comments from other people, including the support worker, as to what happened. The JACO was not persuaded by the JCIO's suggestion, made in comments to the JACO Office, that the complainant's observations that he did not give permission for the Judge to touch him and that he did not like to be touched by anyone means that he agreed that the extent of any touch was light; however
- the material which the complainant provided in support of his complaint included a statement from someone present which said that the Judge had, without thinking, "put" his hand on the complainant's arm, which he found very upsetting. The JACO found that this was evidence on which the JCIO could have relied to form the view that the Judge did no more than put his hand on the complainant's arm.

The JACO also identified a possible disagreement regarding whether the Judge was aware that the complainant did not like to be touched. He felt that this might have been relevant if there was a possibility that the Judge had deliberately made contact, especially contact that was more akin to a "grab". The JACO noted that there is no evidence on the JCIO's file to question the complainant's observation that he had shown his autism passport to the court but that this does not, in itself, mean that the Judge had seen the passport and, more importantly, that he was aware of its contents when he went to see the complainant. He said that the point at issue for the JCIO was not whether the Judge had been told about the existence of the autism passport (or indeed whether he should have been informed of its existence) but whether he knowingly and deliberately breached its requirements when he touched (or grabbed) the complainant and the fact that the statement from the person present stated that the Judge had placed his hand on the complainant's arm "without thinking" would tend to confirm that the Judge was not aware that the complainant should not be touched at the point that he approached him.

The JACO observed that he could not review the merits of the JCIO's decision that the Judge's actions did not amount to misconduct and that it could have better explained how the witness' evidence supported the Judge's response and meant that there was no need to seek further verification. He was content that it followed an appropriate and proportionate process in determining what happened and that there was no need for it to have sought further verification.

Case Study 4 (Tribunal)

The complainant had been involved in Tribunal proceedings concerning a matter in which the Tribunal had ruled that the complainant had no interest and had awarded costs against him. Correspondence sent to the Tribunal from the complainant was treated as an application to set the decision aside which was unsuccessful and a subsequent complaint to the President raised concerns: about the process; that a bundle of papers had been lost by the Tribunal Judge in the course of the proceedings; and about the Judge's acceptance of the evidence.

The President obtained comments from the Tribunal Judge and dismissed the complaint under Rule 34 (b) of the Judicial Conduct (Tribunal) Rules 2014 on the basis it was about judicial decision making and judicial case management and raised no question of misconduct. However, the dismissal letter was erroneously addressed to a member of the complainant's family, with whom he shared an email address and who had previously corresponded with the President about the case. The President's letter had explained that he could not discuss the detail of the case but explained why the complaint fell to be dismissed. The complainant and the person to whom the President's letter had been erroneously addressed, subsequently wrote separately to the President and reiterated the view that the Tribunal Judge's decision had been flawed. The President's response to the complainant apologised for the confusion with their names and explained that there was nothing further to add to the decision to dismiss the complaint.

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

- failed to conduct a proper investigation into concerns about the Tribunal Judge; and
- delayed the conclusion of the complaint.

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 and he was satisfied there was no evidence of maladministration.

Overall, the JACO was satisfied that the President had carried out a proper investigation by considering whether the complaint contained an allegation of misconduct and seeking comments from the Tribunal Judge; providing a reasoned explanation why the complaint fell to be dismissed under Rule 34(b); considering post complaint correspondence and apologising for mistakenly addressing the dismissal letter; and informing the complainant how to complain to him.

The JACO took the view that it would have been better had the President realised that the complaint had come from the complainant and not the person with whom he shared an e-mail address. However, this amounted to human error and not maladministration, given that they had both previously written on the matter and shared an email address.

Although there had been a delay between the receipt of the complaint in April 2019 and the President's November 2019 decision, the JACO was satisfied that it was an oversight rather than poor case management. It was clear that the matter had not been determined because it had not been brought back to the President's attention after the Tribunal Judge's comments had been received and this was not apparent until the complainant raised the outstanding matter in correspondence with another Judicial Office Holder in connection with the proceedings. However, once the President was made aware of the position towards the end of October 2019, the complaint was dealt with within a reasonable timeframe.

The JACO would have recommended that the President apologise to the complainant for the delay and take steps to ensure that a robust system was in place to prevent a re-occurrence, but he had already agreed to do so, for which the JACO was grateful.

Case study 5 (Tribunal)

The complainant had been the Claimant in long running Tribunal proceedings. He subsequently complained to the President alleging misconduct by the Tribunal Judge who heard his case. Part of his complaint about the Judge's conduct was that despite finding that a witness had committed perjury at the hearing he failed to provide a statement to the Police and subsequently failed to share the Police's contact with the parties in the case.

A Regional Judge investigated the complaint but concluded that what had taken place was not due to the personal misconduct of the judge. In respect of the perjury matter, the Regional Judge found that while the Judge had raised his concerns with a witness in the early stages of the hearing, he made no findings regarding perjury and so he had no information relevant to any Police enquiry. He therefore concluded that the Judge had not refused to cooperate with a criminal investigation. He further concluded that there was evidence that the Judge wished to share his communication with the Police with parties, but given the loss of the tribunal file, he did not know whether the Police had any objections, but once the file was located he saw that the Police had no objections to him sharing the information and immediately gave directions to share the information with all parties. The Regional Judge also found that in terms of the lost file, there was no misconduct on the judge's part, and that, as the curators of the file, the Tribunal administration were responsible for its loss and for not operating an effective bring forward system for correspondence to be shown to the judge to action.

The complaint to the JACO was that the Regional Judge exonerated the judge and blamed HM Courts and Tribunals Service for the loss of the file and also that the Regional Judge failed to verify the facts, in respect of the perjury matter, under the provision of Rule 36 of the Judicial Conduct (Tribunals) Rules 2014. Rule 36 requires the relevant President (or delegated Investigating Judicial Office Holder) to consider any source of independent evidence which may help to verify the facts in dispute before dismissing a complaint, unless to do so would be disproportionate.

The JACO did not uphold this complaint as he was content that the Regional Judge followed an appropriate process and that there had not been any maladministration. He found that, in this case the Regional Judge's role was not to consider whether a witness had committed perjury but rather to identify any misconduct issues that might lead the Lord Chancellor or Lord Chief Justice imposing a disciplinary sanction. The guidance to the Rules explicitly states that decisions made by a Tribunal Member during the course of proceedings are made without the interference of Ministers, Officials or other judicial office holders (unless they are considering the matter whilst sitting in their judicial capacity, for example, in an appeal hearing). The Regional Judge was, therefore,

specifically precluded from reviewing the decision the Judge made in respect of whether there was evidence of perjury.

The JACO noted that, in his correspondence with the complainant, the Regional Judge did not cite which Rule the complaint was dismissed under but subsequently confirmed what any matter relating to the judge's findings in respect of perjury would be dismissed under Rule 34 (b) on the basis that it is about a judicial decision or judicial case management and raised no question of misconduct. The Ombudsman found that this was consistent with legislation and guidance.

Case Study 6 (Advisory Committee)

The complainant made a complaint to an Advisory Committee about a Magistrate's actions, both in court and subsequently actions outside of court by allegedly speaking about the case to an individual in a public place.

The Advisory Committee considered the matter and after seeking further comments from the complainant, the Legal Adviser, a witness in court, a witness in the public place and from the Magistrate concerned, the matter was passed to Conduct Panel.

The Conduct Panel conducted a hearing and considered oral evidence from the Magistrate and written evidence from the complainant, the Legal Adviser and the witnesses. It determined that the Magistrate's actions in court (the expression of condolences to a family member sitting in court) did not demonstrate a lack of circumspection. In respect of the alleged conversation about the case in a public place, the panel accepted, on the balance of probabilities and in the absence of evidence to the contrary, that the Magistrate's intention had been to explain in general terms how Magistrates approach their task of sentencing offenders. However, the panel felt that it was naïve of the Magistrate to believe that this would be taken as anything other than an explanation of what happened in the particular case. The panel found that the magistrate came dangerously close to falling short of the circumspection expected of a Magistrate. The Panel's recommendation was that the matter be referred to the Bench Chairman as a pastoral matter to provide informal advice to the Magistrate.

The complaint to the JACO was that the Conduct Panel failed to carry out a thorough investigative process as it did not contact all the individuals he had listed as having witnessed the conversation about the case in a public place.

The JACO did not uphold the complaint as he was satisfied that given the particular circumstances of this case, the Advisory Committee followed an appropriate process that was consistent with the relevant legislation and guidance as:

- the Secretary to the Advisory Committee asked the complainant to provide more information about matters in respect of the conversation in the public place. He also said that he may need to write to anybody who witnessed the conversation and asked for their contact details. The JACO therefore appreciated that from this correspondence, that despite no firm assurances being given, the complainant had a possible expectation that the 6 witnesses he identified would be written to and was therefore surprised to learn that they had not been contacted at all;

- the Conduct Panel sought comments from one witness about what the magistrate had spoken to them about. That witness confirmed that the Magistrate had spoken to them in passing to simply enquire after the well-being of a family member (who was the victim in the case) but the witness was not able to provide any information about the precise content of the conversation and referred to the amount of time that had passed;
- the Magistrate’s own account, both in his written representations and at the Conduct Panel hearing, was that he had spoken to the family member of the victim and conceded that the conversation may have been overheard by others. He said he had been had asked why the defendants had received different sentences, therefore he simply sought to explain how general sentencing procedures work and the factors that Magistrates take into account in reaching a decision; and
- the JACO accepted, given the terms of the Judicial Conduct (Magistrates) Rules 2014, that it was certainly open for the Conduct Panel to have contacted other witnesses under the Rules if it deemed it necessary and proportionate. In this particular case, the Conduct Panel found they had sufficient material to test the Magistrate’s version of events without contacting any other witnesses. The Conduct Panel said that it was concerned with getting involved in what it termed as “satellite issues” and possible consideration of numerous and differing accounts of who said what, when the fact that the Magistrate spoke to an individual about matters associated with the sentencing of the case was not in dispute.

The JACO was satisfied that the Conduct Panel considered whether it needed to contact any of the potential witnesses provided by the complainant but determined that, in the particular circumstances of this case, it decided it was disproportionate to do so.

Case study 7 (JAC)

A candidate in the District Judge Selection Exercise complained to the JACO about perceived maladministration in the handling of his application by the JAC.

The JAC launched the District Judge Selection Exercise on 9 October 2019. Candidates were informed that there would be two stages to the selection process: shortlisting by way of a paper sift taking into account all the information contained in candidate's application and independent assessments and, if shortlisted, a selection day comprising situational questioning and a competency based interview. In the self-assessment of the application form, candidates were asked to provide evidence against five competencies.

The candidate's application was considered by a two-member panel: a Judicial Member (a serving District Judge) and a Lay Member (who acted as Panel Chair). The Panel considered the candidate's application form along with the comments provided by his Independent Assessors. The Panel assessed that the candidate had provided insufficient evidence of his ability to progress further in the selection process.

The candidate complained to the JAC in the first instance. The Head of Corporate Services carried out an investigation but could not find any evidence of maladministration.

The candidate subsequently complained to the JACO. The basis of the complaint was that the applications were not blind sifted (anonymised) and the Panel might brought their knowledge of a candidate to bear on their decision. He also complained that the JAC changed the process from the last District Judge Selection Exercise when all candidates were invited to the Selection Day.

The JACO did not uphold the complaint as he did not identify any maladministration. He was content that the JAC properly handled the application in the District Judge Selection Exercise and the subsequent complaint.

In considering the point about blind sifting the JACO noted that the JAC Diversity update, published on its website said that it was moving towards blind sifting of paper applications. It explained that it had recently ran a pilot exercise and had subsequently extended this approach to all small exercises of under 20 applicants. It further explained that it would roll this process out to all Selection Exercises once it had developed a new digital platform that could support this way of sifting. The JACO welcomed these constructive steps to overcome unconscious bias and potentially increase diversity.

However, in considering the complaint, the JACO was satisfied that the JAC's guidance in the Information Page for candidates set out the process that would be followed by the JAC in this Selection Exercise.

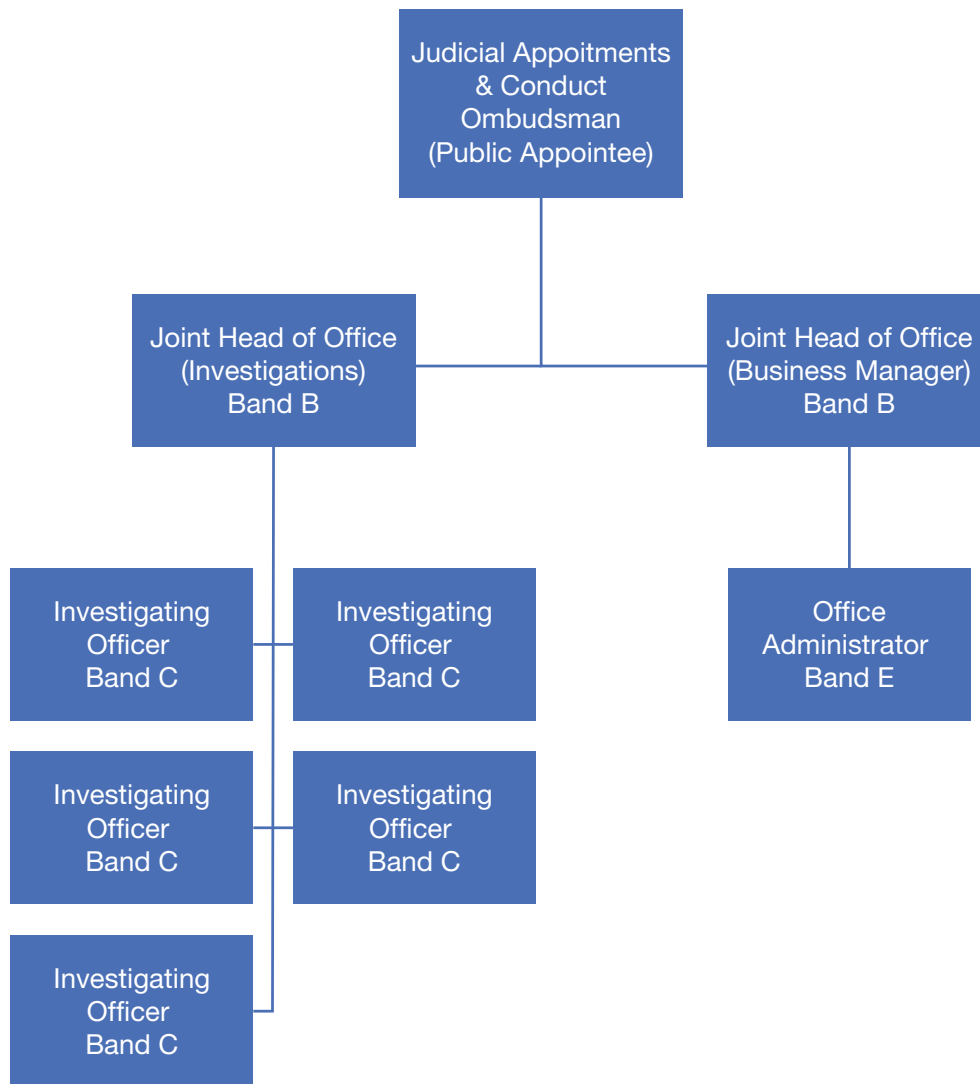
In terms of the complaint that the applications were not blind sifted, the JACO noted that while blind sifting might have a number of benefits and was pleased that the JAC were trialling it, he found that the fact that applications were not blind sifted in this case did not mean that the process was unfair as the JAC did not undertake to adopt a blind sifting process in this exercise. He was further content that the Panel only considered the information contained in the candidate's application, including the examples he provided in his self-assessment against the five competencies and the comments provided by his Independent Assessors.

In terms of the complaint that the JAC adopted a different process in this District Judge Selection Exercise to the previous one where all the candidates were automatically interviewed, the JAC explained that, in the previous District Judge Selection Exercise, due to the low number of applications a decision was made to invite all candidates to the Selection Day. The JACO found that this was a sensible decision given that a sift is essentially a tool to reduce the numbers going forward to the next stage. If there are low numbers of vacancies or low numbers of applicants the JAC would have the resources to invite all candidates to a Selection Day if it deemed appropriate. However, they cannot be expected to invite all candidates to a Selection Day in exercises dealing with large numbers of applicants as it simply would not have the resources to do so. The Information Page for this Selection Exercise clearly set out that there would be a paper sift stage and it was not, therefore, the case that the JAC deviated from the process intended. It simply followed the process that was set out in its information literature for this Selection Exercise.

Overall, the JACO was satisfied that the JAC ran the District Judge Selection Exercise in accordance with the published criteria and did not see any evidence of maladministration.

Annex C

JACO Office structure (March 2021)



Annex D**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%).	Achieved (98%)
PT 2 – to deal with 90% of all correspondence received within 15 working days of receipt.	Achieved (97%)
PT 3 – when a preliminary investigation is required to establish if the potential complaint is within the JACO’s remit. We will conclude this evaluation and provide a full reply within 30 working days/6 weeks, in 90% of cases.	Achieved (98%)
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:-

<ul style="list-style-type: none"> ■ to keep our working practices under review, striving for continuous improvement, in order to deliver the best possible service to our customers; ■ to ensure our leaflets and Website are up to date and reflective of our organisation. We welcome feedback from our customers about how we could improve our service, and will learn from any complaints that we receive about our service, doing our best to put things right; ■ to work creatively to build and maintain our capability to deliver a service that is efficient, responsive and professional. We will have the right people, processes and supporting infrastructure in place; value diversity and the importance of a work-life balance; identify and address any gaps in training and knowledge; and ■ to ensure that our staff maintain a high level of skill in Complaints Handling and Investigations. 	<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:-

<ul style="list-style-type: none"> ■ 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>Achieved.</p>
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Annex E**Forecast and Actual Expenditure 2020/21**

	FORECAST	ACTUAL
Staff costs and salaries	415,800	422,858
Office expenditure, Accommodation, Training, IT Services, Service costs and Miscellaneous (non-COVID 19 related)	13,550	8,213
COVID 19 related Office expenditure, IT Services, Service costs and Miscellaneous	–	3,307
Legal costs	24,650	13,725
Total expenditure	454,000	447,833

Annex F

Statistical Data 2014/15 – 2020/21

Financial year	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21
Cases determined after Full Investigation	92	70	63	79	88	84	76
Conduct (JCIO, Tribunal, Advisory Committee)	25 upheld/ partially upheld 65 not upheld	10 upheld/ partially upheld 59 not upheld	18 upheld/ partially upheld 42 not upheld	8 upheld/ partially upheld 65 not upheld	24 upheld/ partially upheld 55 not upheld	17 upheld/ partially upheld 64 not upheld	17 upheld/ partially upheld 51 not upheld
Appointment	2 not upheld	3 not upheld	3 not upheld	6 not upheld	9 not upheld	1 upheld/ partially upheld 2 not upheld	1 upheld/ partially upheld 7 not upheld
JACO's Time (Days per week)	3	3 (until 25/01/16) 2 (wef 26/01/16)	2	2	2	2	2
Staffing	8 (7.5 FTE)	9 (wef 05/08/15) (8 FTE)	9 (8 FTE)	9 (8 FTE)	9 (8 FTE)	9 (8 FTE)	9 (8 FTE)
Budget Forecast ¹⁵	445,000	453,000	412,000	418,000	423,000	445,000	454,000
Actual spend	401,000	413,000	373,000	403,000	409,000	434,000	447,000

¹⁵ Budget figures rounded to the nearest £1,000.

