

Annual Report 2021-22



Judicial Appointments & Conduct Ombudsman
Annual Report 2021-22

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



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The Judicial Appointments and Conduct Ombudsman

The Ombudsman

The Judicial Appointments and Conduct Ombudsman (JACO) is Mr 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.

The Ombudsman's Role

The JACO is independent of Government, the Ministry of Justice (MoJ), the Judicial Appointments Commission (JAC) and the Judiciary. The JACO's role and powers are set out in the Constitutional Reform Act 2005. This allows him to consider the following types of complaints.

Complaints about the Judicial Conduct Investigations Process

The JACO can:

- Look at complaints made about Investigating Bodies (the Judicial Conduct Investigations Office (JCIO), a Magistrates' Advisory Committee or a Tribunal President)¹ and how they have handled complaints about Judicial Office Holders' personal conduct. Such concerns can be raised by "interested parties", i.e. a complainant or a current or former Judicial Office Holder, whose actions have been the subject of an investigation. The JACO generally requires that complainants have concluded their dealings with the Investigating Body before he will consider a complaint.
- Decide whether there has been a failure by the Investigating Body to follow prescribed procedures (The Judicial Discipline (Prescribed Procedures) Regulations 2014) or some other maladministration.

¹ 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.

- Make recommendations for redress. For example, the JACO can:
 - Set aside an Investigating Body's decision and direct that a new investigation or review be undertaken (in whole or in part), in cases where maladministration led to the Investigating Body's decision being unreliable.
 - Recommend payment of compensation for loss suffered as a result of maladministration by the Investigating Body.
 - Make recommendations about how an Investigating Body can improve its handling of complaints.

Complaints about the Judicial Appointments Process

The JACO can:

- Look at 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 their application for appointment, and/or subsequent complaint, was handled.
- Make recommendations for redress. For example, the JACO can recommend payment of compensation for loss suffered as a result of maladministration, but not as a result of any failure to be appointed.

Foreword

This is my second Annual Report, however, having been appointed on 1 March 2021, it is my first reporting on a year of work whilst I have been in office. The statistics, set out later in this report, provide a comprehensive quantitative analysis of the activities of my office during 2021/22. These statistics allow me to take an overview of that work. They don't tell the full story and this report seeks to provide supplementary information to provide greater understanding of the work. In particular, I am conscious that no two investigations are the same and the length of time to investigate each complaint is influenced by a variety of factors. Further, the statistics regarding the incidence of maladministration alone do not detail the instances in which enquiries by my Office have resulted in Investigating Bodies addressing issues or in which I have been able to give helpful feedback on how a complaint could have been dealt with differently. This feedback is always well received and acted upon to prevent similar circumstances in the future.

The unprecedented circumstances of the pandemic have led to pressure on all public sector organisations and backlogs have arisen because of that. I would like to thank complainants for their patience whilst awaiting the outcome of investigations and acknowledge, from correspondence I have seen, the frustration this can cause. My office has for many years had a largely static work-force, building up years of experience, however, in the last year there have been two retirements, including the Senior Investigating Officer. I would like to congratulate those staff on their dedicated service. I am also very grateful to the remaining staff who have continued to work hard to investigate complaints and report to complainants within the shortest time possible.

To ensure a transparent process, and to manage the expectations of complainants, I have been involved in devising further explanatory information to give clear guidance in terms of my remit, which aspects of a complaint I am able to investigate and report on, and more information on timescales. I acknowledge that to many, not previously involved in making complaints, the system and the extent of my remit can be complex and I know that my office work tirelessly to advise complainants where they can.

In carrying out my role, from an operational perspective, I rely on Investigating Bodies for their cooperation in respect of providing files in a timely manner and answering queries from my office and I am grateful for their cooperation to this end. From a strategic point of view, I am grateful to heads of those organisations, who I meet periodically to feedback on trends or individual cases. Whilst respecting my independence, these professional relationships are vital to be able to represent the views of complainants and improve systems for future service users.

Judicial appointments continue to attract very few complaints which evokes confidence in the work of the JAC in delivering an effective and fair appointments process. The incidence of maladministration within the Judicial Conduct Investigations process has also remained relatively low. It will be a challenge for public bodies to maintain the low incidence of maladministration, not least due to the strain of high workloads and large backlogs of cases, which can cause frustration to service users. Other socioeconomic factors caused by world and UK events are also likely to have an impact on the challenges faced.

Whilst some of my foreword shows a challenging position in respect of complaints, I can assure complainants that they are at the heart of our service and my office and I will continue to work diligently to address each complaint in the most timely way possible.

Douglas Marshall

Performance²

This chapter provides information about the process followed in handling enquiries and complaints, the volume received, the stage at which matters were concluded, the outcome of complaints, and the extent to which the JACO Office has met its targets.

Summary

Compared to 2020/21, the JACO Office received 24% more correspondence that could be classified as either an enquiry or a complaint. Despite this increase in workload, the JACO Office met its target to acknowledge receipt of new complaints and correspondence within 5 working days of receipt in 98% of cases and exceeded its target to deal with correspondence within 15 working days of receipt in 90% of cases.

Consistent with the increase in enquiries and complaints, the JACO considered 16% more cases, to determine whether issues within his remit warranted further investigation and 33% more cases were concluded by way of a Preliminary Investigation Report than in 2020/21. The increase in the percentage concluded at this stage reflects the desire to provide timely decisions and to manage the JACO Office resources effectively to focus on cases requiring further investigation. Again, the JACO Office was able to continue to meet its target to provide a decision within 6 weeks of receiving information sufficient to enable the JACO to consider the complaint in 90% of cases.

The impact of the increased workload, alongside the complexity of the cases addressed and unanticipated delays in recruiting replacements for the Senior Investigating Officer and 2 Investigating Officers, was evident in the 13% decrease in the cases concluded by the JACO following a Full Investigation and in the increase in the time taken to complete such Full Investigations. On a positive note, it took less time than in previous years for responses to be received to the JACO's referred draft reports. Throughout, the JACO Office sought to alert complainants to potential delays and to keep them

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

updated about the progression of their cases. It exceeded its target to keep all complainants fully informed on a monthly basis in 98% of cases. In order to address both the loss of experienced staff and the increase in the workload, a business case was accepted for an additional member of staff and the recruitment process commenced. The focus in 2022/23 will be on the training of new staff to ensure that the backlogs and delays in commencing investigations, which contributed to the overall time taken to conclude cases, can be reduced.

It remains the case that the incidence of maladministration has been low. Indeed, the percentage of complaints upheld or partially upheld was 6% lower than in 2020/21. The JACO used his powers to set aside a decision in only 1 case and made systemic recommendations in 7 cases. These low figures reflect an increasingly proactive approach by Investigating Bodies, who have sought to address issues brought to their attention by the JACO Office, during the course of its investigations. This is welcomed by the JACO.

The JACO Office has, with 1 exception, achieved all the targets set out in the 2021/22 Business Plan (see Annexes D and E). The exception was that the JACO Office did not meet its stated aim to ensure its website was up to date and reflective of the organisation. Due to high volumes of work and understaffing during the year, it was not possible to take forward proposed changes to the website or to publish the new versions of the Judicial Conduct Investigations Process guidance leaflet and form, which are currently in use.

In addition, the JACO Office has not always met the requirement to reply to requests for information within the statutory period (see also “Corporate Governance”).

The JACO Office remains committed to providing a high level of customer service and to progressing required changes in 2022/23.

Case work process

The JACO Office follows a three-step process in handling enquiries and complaints which is set out below.

1. Initial Check

The JACO Office receives enquiries by telephone, email and in the post. The JACO Office aims to acknowledge all enquiries within 5 days of receipt. The JACO Office carries out initial checks to determine whether it can deal with the complaint. This includes checking: whether the complainant has had a matter considered by an Investigating Body; and whether that matter has been concluded³. If this is not the case, and the enquiry has not been addressed by information contained in the Office's automatic acknowledgment of emails, then the JACO Office will, where possible, seek to provide further information in order to assist the enquirer in deciding what they might do next. If the enquirer has made a relevant complaint to an Investigating Body, which has been concluded, and the JACO Office has sought and received any further information needed to progress the complaint, it is passed for a Preliminary Investigation.

2. Preliminary Investigation

Complaints that appear to be matters that the Office can deal with are given a detailed initial evaluation to determine whether they might warrant a Full Investigation⁴. The JACO Office obtains complaint papers from the Investigating Body and prepares advice, based on these and the complainant's correspondence, for the JACO to consider. The JACO decides whether the case must be passed for a Full Investigation based on whether:

³ The JACO can consider cases where the application is made on grounds alleging undue delay in the Investigating Body addressing a complaint and the JACO considers that the application has been made within a reasonable time (generally considered as following a period of over six months delay).

⁴ This is referred to as a "Review" in Section 110 of the Constitutional Reform Act 2005, which also sets out the criteria for undertaking such a review.

- He considers it necessary. In most cases this 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 finding of maladministration.
- The complaint has been made within 28 days of the complainant being notified of the decision reached by the Investigating Body⁵.
- The complaint has been made in a form approved by the JACO.

If any of the above criteria are not met, a letter or Preliminary Investigation Report is provided to the complainant, explaining the JACO's decision and his reasons for not progressing the case. If the criteria are met, the case is passed for a Full Investigation. The JACO Office aims to provide a decision on whether the case will be progressed within six weeks of receiving the complaint papers from the Investigating Body.

The Preliminary Investigation process is focused on the complainant and ensuring that they receive a decision within a reasonable timescale, particularly if there is no prospect of the JACO making a finding of maladministration. It is also central to the JACO Office managing its workload within the allocated resources, enabling it to concentrate on the cases where there are issues that require more detailed analysis.

3. Full Investigation

Full Investigations involve detailed and comprehensive investigation of cases and often require engagement with large volumes of complex documentation. In determining cases that are passed for Full Investigation, the JACO takes into account complainants' correspondence and liaises with other parties.

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's response to their complaint. This deadline can be extended at the JACO's discretion.

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. Relevant content from the responses is included in the final reports provided to complainants.

In addition, in cases where a Full Investigation is necessary, the JACO is required to refer his report, in draft, to the Lord Chancellor and either the Lord Chief Justice (in respect of Judicial Conduct matters) or the JAC Chairman (in respect of Judicial Appointments matters) and to take account of comments made in finalising his views.

Most Full Investigations are completed within six to nine months. More complex investigations may take longer than this. 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, after draft reports have been referred to the Lord Chancellor and either the JAC Chairman or the Lord Chief Justice, complainants are generally advised that there will be no update the following month as it would be unlikely that a reply would have been received.

Correspondence received

The JACO Office received 3% less correspondence than in 2020/21.

The JACO Office received 2711 pieces of correspondence during 2021/22⁶, the majority of which was received electronically. This figure was 3% lower than the 2,788 pieces received in 2020/21.

⁶ 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.

Enquiries and complaints received

The JACO Office received 24% more correspondence than in 2020/21 that could be classified as either an enquiry or a complaint.

Of the 2711 pieces of correspondence, 1469 were enquiries and complaints. This reflects a 24% increase on the 1181 enquiries and complaints received in 2020/21.

The vast majority (99.5%) of the enquiries and complaints received came within the JACO Judicial Conduct Investigations remit.

Performance against targets

In 98% of cases, the JACO Office acknowledged receipt of new complaints and correspondence within 5 working days of receipt.

In 97% of cases, the JACO Office dealt with correspondence within 15 working days of receipt.

The JACO Office met its target to acknowledge receipt of 98% of all new complaints and correspondence from complainants, within 5 working days of receipt and exceeded its target to deal with 90% of all correspondence received within 15 working days of receipt.

This was largely achieved through the automatic acknowledgement of correspondence received by email. However, it should be noted that whilst the targets were met in relation to postal correspondence, there were delays in receiving correspondence posted to the office between April and July 2021 and December 2021 and January 2022, whilst staff were working from home.

Initial checks

55% of the enquires and complaints received were concluded following an initial check as they were found to fall outside the JACO remit or were otherwise not taken forward. This is consistent with the figure in 2020/21.

Outcome of initial checks

Of the 1,469 enquiries and complaints, 813 were found to fall outside the JACO remit or were otherwise not taken forward. This represents 55% of the total enquiries and complaints received and is consistent with the percentage in this category in 2020/21.

It is the case that the title “Judicial Appointments and Conduct Ombudsman” is often seen as implying a far wider role than the JACO’s very narrow statutory remit. Consequently, the JACO Office is regularly contacted by people raising issues arising from cases in which they have been involved. These commonly include concerns about:

- Issues arising from court cases and observations about those involved with the cases in question, for example solicitors, barristers, and HM Courts and Tribunals Service staff:

In particular, the JACO Office receives a significant volume of correspondence from people who frequently make contact (often by e-mail correspondence copied to many other recipients) on such matters. Whilst often keenly felt, these are not issues which fall within the JACO’s remit to comment on or which might form the basis of a complaint that an Investigating Body could consider. In these circumstances, the JACO Office will seek to explain why the concerns cannot be dealt with by the JACO and, where possible, look to provide information about other potential avenues to pursue.

- Judicial Office Holders:

Such matters might form the basis of a complaint to an Investigating Body. However, whilst the JACO Office will not advise people that they cannot complain to the relevant Investigating Body, it is keen to avoid giving people unrealistic expectations. It therefore seeks to direct people to information

about the kinds of issues that can be considered under the Judicial Conduct arrangements (which are intended only 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) and those which relate to judicial decisions and judicial case management, which can only be addressed through the courts.

Such correspondence also includes concerns about Investigating Bodies, but which cannot be taken forward. 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. However, some correspondence cannot be progressed because:

- The complaint to the Investigating Body has not yet been concluded:

In these circumstances, unless there is evidence of undue delay, which might require the JACO's intervention, the JACO Office will provide information about the JACO remit and advise the complainant to write again following the Investigating Body's decision, if they think there are issues with how their complaint was handled.

- The complaint is about the Investigating Body's decision and, the complainant, having been given information about the JACO's remit and the opportunity to set out concerns about the Investigating Body's process, does not do so:

The JACO is not a route of appeal if people are simply unhappy with the decision received from the Investigating Body as he cannot review the merits of any decision reached or reconsider the question of whether a Judicial Office Holder's actions might amount to misconduct. Rather, the JACO can only look at the process followed by the Investigating Body in reaching its decision.

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 their 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.

- The complainant, having been given an opportunity to do so, does not provide the required "permission to disclose":

The JACO Office requires complainants to provide explicit consent for their complaints to be disclosed to the Investigating Body complained against and for the Investigating Body to provide its papers.

Preliminary Investigations

Volume considered

The JACO considered 16% more cases, to determine whether issues within his remit warranted further investigation, than in 2020/21.

The JACO considered 272 cases relating to his Judicial Conduct Investigations remit to determine whether issues within his remit warranted further investigation. This reflects a 16% increase on the figure of 235 in 2020/21. However, it is consistent with the figure of 268 in 2019/20.

Outcome of Preliminary Investigations

33% more cases were concluded by way of a Preliminary Investigation Report than in 2020/21.

Of the 272 cases considered:

- 66% (180) were concluded at this stage by way of a Preliminary Investigation Report:

This is a 5% increase on the percentage in 2020/21 (61%) but is broadly consistent with the percentage in 2019/20 (68%).

- 92 (34%) were passed for Full Investigation:

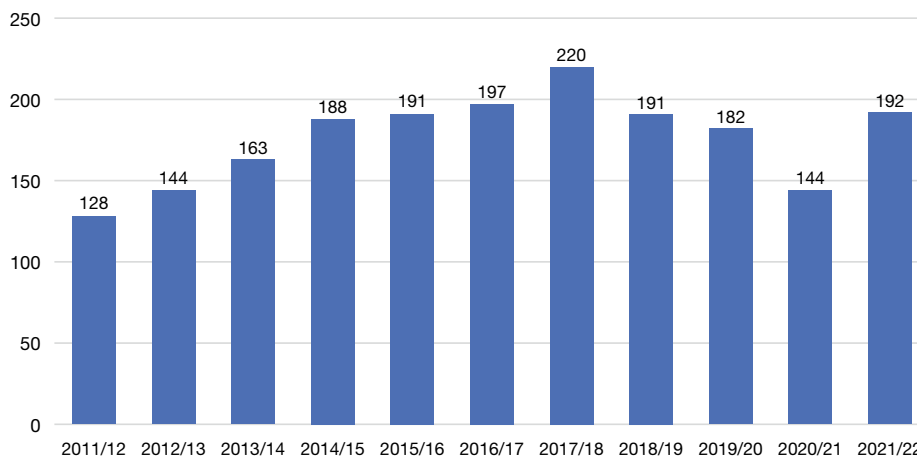
This is a 5% decrease on the percentage in 2020/21 (39%) but is broadly consistent with the percentage in 2019/20 (32%).

- 12 of the 92 cases which were initially passed over for further investigation were subsequently concluded by way of a Preliminary Investigation Report:

This is a 50% increase on the number of such cases in 2020/21.

Overall, the number of cases concluded by way of a Preliminary Investigation Report, was 33% higher than the 144 concluded in this way in 2020/21. However, the figure of 144 in 2020/21 was the lowest figure since 2011/12 and the figure of 192 in 2021/22 is broadly consistent with the pre-Covid figures in 2019/20 and 2018/19 of 182 and 191 respectively.

Cases concluded by way of a Preliminary Investigation Report since 2011/12



The increase in the percentage of cases concluded following a Preliminary Investigation, and in the number initially passed for further investigation, which were then concluded by way of a Preliminary Investigation Report, also reflects a focus on ensuring that complainants' expectations are managed by the receipt of timely decisions. This is a key consideration as Full Investigations are very detailed and can take many months. There is no point in proceeding with such investigations if there is no prospect that the

JACO would find maladministration and uphold the case. In order to ensure that decisions are made at the right time, there has been an increase in the number of enquiries made with Investigating Bodies as part of the Preliminary Investigation process.

Of the cases concluded at this Preliminary Investigation stage:

- 121 were about matters considered by the JCIO.
- 56 were about matters considered by Tribunals.
- 3 were about matters considered by an Advisory Committee.
- 177 cases were concluded as the JACO found there was no prospect of finding maladministration.
- 3 cases were concluded as the JACO found that the complaint to JACO 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”.
- No cases were determined on the basis that they had not been made in a form that the JACO had approved.

Issues considered in cases concluded at initial Preliminary Investigation

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

Performance against targets

In 90% of Preliminary Investigations the JACO Office provided a decision within 6 weeks of receipt of information sufficient to enable the JACO to consider the complaint.

The JACO Office met its target to conclude 90% of Preliminary Investigation evaluations and provide a full reply within 6 weeks of receiving the Investigating Body’s complaint papers or enough information to determine the complaint.

Full Investigations

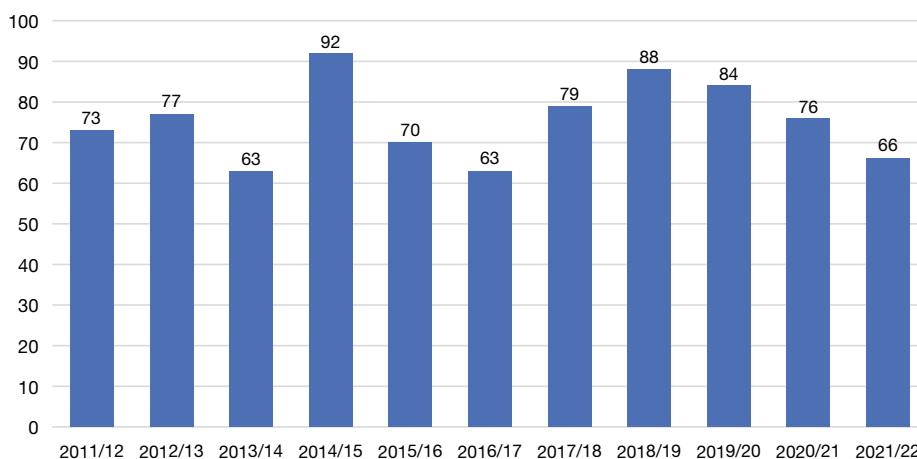
Volume determined

The JACO concluded 13% less cases following a Full Investigation than in 2020/21.

The JACO determined 66 cases following a Full Investigation during 2021/22 (this included cases in which an investigation had been ongoing at the end of March 2021). This is a 13% decrease from the figure of 76 in 2020/21 and reflects a general decrease since 2018/19, but is broadly similar to the numbers determined in the previous 10 years⁷.

Alongside the time taken to conclude investigations, which is discussed below, it is noted that one of the factors that contributed to this decrease was that there were 10 cases, which had been passed for Full Investigation, in which the JCIO agreed to withdraw its decision and look at aspects of complaints again, during the course of the JACO's investigation.

Cases concluded following a Full Investigation
since April 2011



⁷ The average number of cases determined following a Full Investigation between 2011/12 and 2020/21 was 77 and has ranged from a low of 63 to a high of 92 in this period.

Complaints determined by Investigating Body

Of the cases which the JACO determined under his Judicial Conduct Investigations remit following a Full Investigation:

- 47 concerned matters considered by the JCIO. This included:
 - 3 cases concerning the JCIO's handling of concerns expressed about a Coroner's actions.
 - 5 cases which involved consideration of the JCIO's handling of Judicial Conduct matters referred by an Advisory Committee.
 - 1 case which involved consideration of the JCIO's handling of Judicial Conduct matters referred by a Tribunal President.
- 12 concerned matters considered under the Judicial Conduct arrangements by Tribunal Presidents (or their delegates). This included 1 case in which the Tribunal President referred matters for further consideration by the JCIO.
- 8 concerned matters considered under the Judicial Conduct arrangements by Advisory Committees. This included 5 cases in which the Advisory Committee referred matters for further consideration by the JCIO.
- 3 cases were instigated by Judicial Office Holders (3 Magistrates) who asked the JACO to review the process by which concerns about their actions had been considered by Advisory Committees and the JCIO.

In addition:

- there were 12 instances during the year in which cases referred for further investigation were concluded without a Full Investigation being conducted as it became clear, during the further investigation process, that there was no prospect of the JACO finding maladministration.
- there were 5 instances during the year in which the complainant either explicitly or by effect withdrew their complaint.
- at the end of March 2022, there were 8 cases in which the JACO was awaiting responses to referred draft reports (the equivalent figure at the end of March 2021 was 14). This is usually the final stage in the JACO investigation process.

Time taken to conduct investigations

It has taken more time, than in 2020/21, to complete Full Investigations.

Approximately 80% of the 66 investigations concluded during 2021/22 took more than 6 months⁸ and 15% took over a year. This is significantly longer than in 2020/21, in which 45% of the 76 investigations took more than 6 months and only 7% took over a year. It also reflects an increase in the time taken from 2019/20 in which approximately 25% of cases took more than 6 months and 5% of the 84 investigations took more than a year.

There were also 4 outstanding cases in which investigations had been ongoing for more than 12 months at the end of March 2022. In 2 cases the length of time had encompassed: 6 month periods in which the case was put on hold in order to allow the Investigating Body to give further consideration to issues regarding the Judicial Office Holders' conduct; and difficulties in obtaining papers regarding the investigation of such matters. In the remaining 2 cases, the length of time had been due to a combination of workload pressures and the complexity of the issues raised.

At the end of March 2022, there were 52 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 a 53% increase from the figure of 34 at end of 2020/21.

There are several factors that have contributed to the increase in both the time taken to address investigations and the number outstanding at the end of the year, including:

- The complexity of the cases.
- The retirement of the Senior Investigating Officer and the further need to replace two experienced Investigating Officers, following the retirement of one and the promotion of the other. Unanticipated delays in the recruitment process left the office understaffed between November 2021 and March 2022.

⁸ 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. It is also based on the assumption that a month is equal to 4 weeks, i.e. 20 working days.

Time taken to receive responses to referred draft reports

It has taken less time, than in 2020/21, to receive responses to referred draft reports.

It is noted that the increase in the length of time taken cannot be attributed to the time taken to receive responses to referred draft reports. The JACO requests that a response is received within 8 weeks and:

- The proportion of cases in which a response was received in 8 weeks or less increased from 42% to 61%.
- The proportion of cases in which a response was received in 12 weeks or less increased from 80% to 91%.
- There was only 1 case in which a response took more than 6 months, reflecting the continuing effectiveness of a more structured system for monitoring and chasing outstanding responses.

There were no cases, concluded in 2021/22, in which comments were received at this stage.

Performance against targets

In 99% of instances when a monthly update was due, the JACO Office provided one.

The JACO Office exceeded its target to keep all complainants fully informed on a monthly basis in 98% of cases.

Outcome of Full Investigations

The percentage of complaints upheld or partially upheld was 6% lower than in 2020/21.

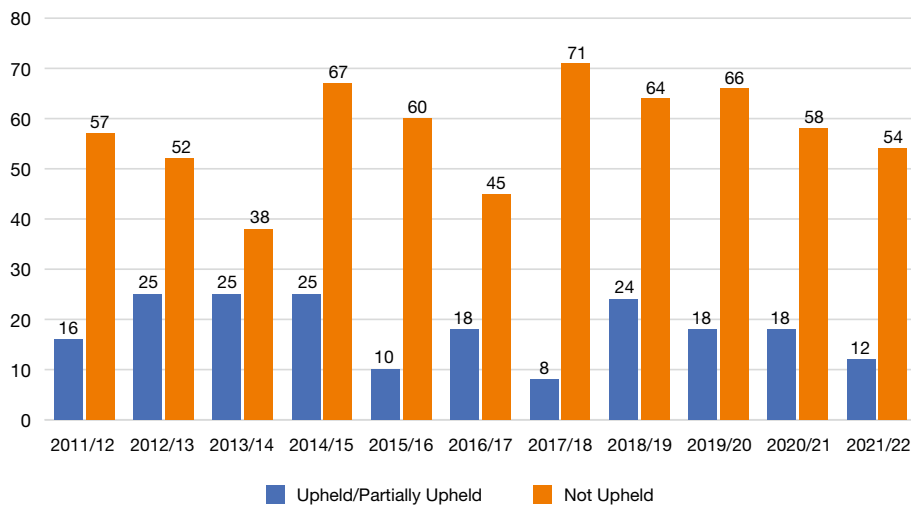
The JACO determined 54 cases which he did not uphold. This amounts to 82% of the cases determined following a Full Investigation.

The JACO upheld or partially upheld 12 cases. This amounts to 18% of the cases determined following a Full Investigation. These figures are 6% lower than the number and percentage upheld or partially upheld in 2020/21 in which the JACO upheld or partially upheld

18 cases (24%). Overall, the percentage upheld or partially upheld following a Full Investigation is slightly below the equivalent figures in previous years⁹.

Again, this reflects an increase in the number of cases in which the JCIO, during the JACO's investigations, agreed to withdraw its decision and look at aspects of complaints again, in light of issues raised. The JACO has welcomed this proactive approach. It remains open to complainants, following the conclusion of any further investigation, to pursue their concerns about the initial investigation and to add any further concerns about the reinvestigation for the JACO to consider.

Outcome of Complaints (total complaints upheld/partially upheld or not upheld) since April 2011



⁹ The average percentage of cases upheld between 2011/12 and 2020/21 was 24.5% and has ranged from a low of 10% to a high of 40% in this period.

Cases upheld or partially upheld by Investigating Body

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

- 10 were in respect of investigations conducted solely by the JCIO.
- 1 was in respect of an investigation conducted solely by an Advisory Committee.
- 1 was in respect of an investigation conducted by an Advisory Committee and the JCIO.

Issues resulting in a finding of maladministration

Overall, the incidence of maladministration has remained very low.

The following observations should be seen in the context of the overall very low occurrence of maladministration.

Issues which caused the JACO to find maladministration included:

- 3 cases, dealt with by the JCIO, in which there was a failure to follow an investigation process that was consistent with the appropriate guidance, before assessing that complaints could be rejected or dismissed as not being about misconduct.
- 3 cases, dealt with by the JCIO, in which missing opportunities, offered by post-complaint correspondence or initial enquiries by the JACO office, to rectify process issues, contributed to the finding of maladministration.
- 3 cases, dealt with by the JCIO, in which aspects of the complaint were overlooked or misunderstood and were, therefore, not addressed.
- 3 cases, 2 dealt with by the JCIO and 1 dealt with by an Advisory Committee and the JCIO, in which concerns about case management, poor communication and delay amounted to maladministration.
- 3 cases, dealt with by the JCIO, in which the JCIO failed to follow an appropriate process as it did not verify the facts in relation to allegations that there had been a delayed judgment, which the JCIO suggests, if it is in excess of three months, might raise a question of misconduct.

- 2 cases, 1 dealt with by the JCIO and 1 dealt with by an Advisory Committee, in which relevant information was not considered when dismissing the complaint.
- 1 case, dealt with by the JCIO, in which correspondence providing further particularisation of a complaint was overlooked.
- 1 case, dealt with by an Advisory Committee, in which it failed to follow the correct process in rejecting the complainant's concerns as out of time.
- 1 case, dealt with by an Advisory Committee, which was then referred to the JCIO, in which the process followed by a Conduct Panel in adding points to the complaint was not consistent with relevant legislation and guidance.

Other themes and issues emerging from investigations

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.

Issues with Correspondence

There were 13 cases in which the JACO expressed concerns about correspondence which did not amount to maladministration or contribute to an overall finding of maladministration. These included that correspondence:

- Contained errors, such as: referring to the wrong Judicial Office Holder in the title of a document; not getting the complainant's name right; being addressed incorrectly; referring to hearing dates that had not happened; referring to an online complaints portal comment by the complainant that did not exist; and referring to the wrong rule.

- Could helpfully have:
 - Better explained the decision made. That is, it could have more clearly set out why concerns were either outside its remit to consider or fell to be dismissed as they were issues which could only be pursued through the courts (including how a Judicial Office Holder responded to a request for reasonable adjustments and allegations of discrimination, which were based on judicial decisions or judicial case management as opposed to the language used).
 - Been more explicit about: deadlines for providing further information; whether it had accepted a complainant's representations to extend the deadline for bringing a complaint; and responding to points raised in post-complaint correspondence.
 - Responded to correspondence received from complainants in circumstances where it would have been helpful to have provided further clarification.

Other Issues

There were 20 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 determining whether a finding of maladministration was warranted, the JACO took into account: factors which had contributed to the delay (e.g. overlooked correspondence, communications breakdowns, the question of whether correspondence was reasonably not treated as a judicial conduct complaint and the context of the COVID-19 pandemic and the impact that this had on Investigating Bodies); the length of the delay; how regularly complainants were updated; whether the case was allowed to drift; and whether apologies were offered by the Investigating Body.

- 4 cases in which an oversight or error would have potentially warranted a finding of maladministration if the Investigating Body had not proactively taken steps to address matters following enquiries by the JACO Office. This included 1 case in which the Investigating Body made an error when it informed the complainant that a Nominated Judge had dismissed the complaint when the Nominated Judge had in fact recommended that the Lord Chancellor and Lord Chief Justice dismiss it.
- 4 cases in which the Investigating Body did not engage with the complainant to discuss the closure of a complaint or its decision and either forwarded correspondence to the JACO office or relied on the fact that the complainant had already been directed to or raised concerns with the JACO Office. It is noted that the JACO cannot review the merits of an Investigating Body's decision. As such, notwithstanding the option to pursue process concerns with the JACO office, it remains appropriate for Investigating Bodies to seek to explain their decisions to complainants. This is particularly the case in circumstances where the Investigating Body has explicitly invited complainants to make contact if they do not understand the decision on their complaint.
- 3 cases in which the Investigating Body did not respond to requests that it telephone the complainant (either during or following the decision on the complaint).
- 2 cases in which the Investigating Body did not initially attach a letter to a response issued via its online complaints portal.
- 1 case in which the Investigating Body gave the complainant less than the 15 working days outlined in the Rules to provide further particularisation of their complaint.
- 1 case in which the Investigating Body failed to maintain an appropriate audit trail and was unable to provide a copy of evidence considered as part of its decision-making process. In this instance, the JACO took into account that this was not reflective of the Investigating Body's standard procedure and was exacerbated by the departure of the caseworker from the Investigating Body.
- 1 case in which the Investigating Body acknowledged an error but could also have helpfully apologised to the complainant for the mistake.

- 1 case in which the Investigating Body overlooked that concerns raised related to an alleged pattern of behaviour.
- 1 case in which the Investigating Body appeared initially to have failed to consider whether the person complained about held a Judicial Office before closing the case on the basis that they did not.
- 1 case in which the Investigating Body could helpfully have repeated its request for further papers from the complainant, in a different format, given the difficulties they had expressed in accessing the online complaints portal.

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

- Complainants' experience of using the Investigating Body's online complaints portal. This included:
 - 6 cases in which complainants raised concerns that they either had not received an automated email advising them to log on to the Investigating Body's complaints portal to view a change in their complaint or could not see a decision letter on the portal when their case was closed. In each instance, the Investigating Body was able to provide evidence that the emails had been sent and that the letters were available on the portal.
 - 1 case in which the complainant had difficulties logging on to the portal which were addressed by the Investigating Body.
- The interpretation of the Rules concerning:
 - The deadline for bringing a complaint to an Investigating Body. This included:
 - 1 case in which the complainant argued that they had been delayed in bringing the complaint to the Investigating Body as they pursued their complaint with the Coroner to its conclusion first. The JACO was satisfied that the Investigating Body's guidance is clear that a complaint to it must be made within three months of the events complained of.

- ❑ 2 cases where the complainants raised concerns that they had been asked to provide representations to extend the time limit but were subsequently advised that matters could not be considered in any event as they fell to be dismissed on other grounds. The JACO found that the Investigating Body had followed an appropriate process that was consistent with the Rules.
- ❑ 5 cases in which the complainant sought to argue that concerns, which had occurred within three months of them bringing the complaint, should be considered as the latest event or matter complained of, such as to bring concerns about earlier incidents in time. The JACO was satisfied that the Investigating Body had considered relevant evidence in determining that a pattern of behaviour had not been established and that its approach was consistent with the Rules.
- The proportionality of making further enquiries:
 - ❑ In 8 cases in which this issue arose, the JACO was satisfied that the Investigating Body had sufficient evidence to make decisions on the balance of probabilities and that their decisions not to make further enquiries were in accordance with the reference to the need for proportionality in the Rules.
- Investigating Body's handling of allegations of:
 - Discrimination by Judicial Office Holders.
 - ❑ There were 6 cases in which complainants objected to the Investigating Body dismissing allegations that Judicial Office Holders had discriminated against them on the grounds of either race or disability. In each instance, the JACO was satisfied that the Investigating Body had considered relevant evidence in determining that the principle of judicial independence would preclude it from examining a judicial officer holder's decisions or case management in order to determine whether they were motivated by bias. The JACO found that the Investigating Body's process was consistent with the Rules and that it appropriately advised complainants that such matters could only be pursued through the courts.

- Criminal conduct.
 - There were 5 cases in which complainants raised concerns that Investigating Bodies had failed to address allegations against Judicial Office Holders of fraud, perjury or other criminal offences. The JACO found that it was appropriate for Investigating Bodies to explain that such matters could not be investigated by the judicial disciplinary process and that it could only consider such matters based on a finding by the police.

Redress

Set Aside

The JACO used his powers to set aside a decision in 1 case.

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 Investigation matter if he identifies maladministration which renders the determination unreliable.

In 2 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 9 cases, 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 1 case, which had been considered by the JCIO, the maladministration raised issues which resulted in the JACO setting aside the JCIO's decision.

Compensation

The JACO did not make any recommendations for the payment of compensation.

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 2021/22, the JACO did not make any recommendations that monetary compensation be awarded. There were 3 cases in which compensation was requested but, as the JACO did not uphold the complaints, there were no grounds for such redress.

In terms of other forms of redress:

Apology

In 7 cases, which were upheld or partially upheld, the JACO found that an apology was the appropriate redress. In 6 of these cases, the JACO did not recommend any redress as in 5 cases the Investigating Body had previously apologised and in the remaining 1 case it had already agreed to do so.

The JACO also found that an apology was warranted, in respect of matters which he did not uphold, in 9 cases. However, he did not recommend any redress as in 8 of these the Investigating Body had previously apologised and in the remaining 1 case it had already agreed to do so.

The JACO welcomed this proactive approach.

Preventing a recurrence of concerns identified during JACO reviews

The JACO made systemic recommendations in 7 cases.

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

- In JCIO cases about:
 - Responding to complainants who request discussions in respects of the merits of the JCIO's dismissal of their complaints.
 - Responding to complainants who request a call back within a reasonable timeframe.
 - Acknowledging the acceptance of representations to extend the time limit, in cases which it has previously suggested are out of time.
 - Ensuring that letters seeking further information are clear that either it will only accept a first response or that it will wait until the deadline set before proceeding.
- In Advisory Committee cases about:
 - Maintaining a robust audit trail to reflect the Chairman's considerations of, and decisions arising from, representations to extend the time limit for accepting a complaint.
 - Being mindful of the frequency of reference to Rule 61, which allows a Conduct Panel to proceed in the absence of the magistrate complained about, ensuring that it is clear that it would be for the Conduct Panel to determine whether the magistrate had acted "without reasonable excuse" such that it could proceed without them.
 - Recording Conduct Panel hearings and, where this is not possible, taking care to review and agree the notes, in particular in circumstances where multiple issues are being addressed.
- In Tribunal cases about:
 - Offering early apologies, where appropriate, in order to forestall any escalation of a complaint.
 - Ensuring closer liaison between the Tribunal and President's Office where there is ambiguity about the nature of a complainant's concerns and how they wish to pursue them.

There were also a further 3 JCIO cases in which the JACO would have made a systemic recommendation but it had already addressed matters. These included:

- 1 case in which it had already removed references to an incorrect email address for contacting it, which were on its website.
- 1 case in which it had already agreed to include an explicit deadline in any requests for further information.
- 1 case in which it had already addressed concerns about the standard letters it sends when rejecting complaints and taken steps to provide more detail to complainants about the reasons for its decision.

The JACO welcomed this proactive approach.

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 2021/22 the JACO responded to:

- Approximately 118 pieces of correspondence sent in response to cases concluded following a Preliminary Investigation.
- Approximately 17 pieces of correspondence sent in response to cases concluded following a Full Investigation.

There were no instances in 2021/22 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 the JACO apologised for having not addressed a point raised by a complainant in his initial report, which he responded to in post-complaint correspondence.

There were no applications for Judicial Review outstanding at the end of March 2022.

There were 3 cases (1 concluded previously and 2 concluded in 2021/22) in which: complainants sought to judicially review the JACO's decisions; permission to do so was refused; and the question of pursuing costs in respect of defending these unsuccessful applications arose. In the previously concluded case the JACO Office advised the Government Legal Department that it did not wish to pursue costs and in the other 2 cases instructed that costs should be pursued.

The JACO Office instructed the Government Legal Department in respect of two cases in relation to allegations that the JACO Office had breached the Equality Act 2010 in its dealings with the complainants.

Judicial Appointments Process

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.

6 cases concerning the Judicial Appointments process were considered at the Preliminary Investigation stage. 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. 5 cases were referred for further consideration. In the remaining case the JACO wrote to the complainant to explain that he did not consider it necessary to conduct an investigation of the complaint as there was no prospect of him determining that there had been maladministration which had disadvantaged them as a candidate for selection or as a person selection. This was largely as the Selection Exercise in question was still ongoing.

The JACO determined 5 complaints about the Judicial Appointments process in 2021/22. Again, all related to the actions of the JAC, including its delegated investigation function. This was a decrease compared to 2020/21 in which 8 cases were considered.

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 (all 5 cases received a response in under 7 weeks).

No cases were upheld or partially upheld. Although the JACO found that there had been maladministration in one case, he did not find that this had disadvantaged the complainant as a candidate for selection and so did not uphold the complaint. Given that the number of applicants that the JAC considers for appointment was 3471 in 2020/21 and 8258 in 2019/20¹⁰, it is notable that the number of complaints to this office was so small.

Issues that the JACO considered were:

- The JAC's response to requests for Reasonable Adjustments.
- Whether it was fair to have an online test where candidates were required to time themselves.
- A cross-referencing error between pre-reading material and an online scenario test.
- Whether a candidate's marks should have been discussed by the panel following the moderation of their complaint, which resulted in them being borderline for progression.
- Whether the JAC had provided a candidate with proper reasons for its decision not to select them.
- The consistency of feedback provided to the same candidate across selection exercises for similar judicial positions.
- The statutory consultation process undertaken by the JAC.

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

¹⁰11 According to the JAC's official statistics it considered 3,471 applications in 2020/21, 8,258 applications in 2019/20, 4,917 in 2018/19 and 5,125 in 2017/18.

Complainants and stakeholders

The COVID-19 crisis

The COVID-19 crisis 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 worked remotely between April and July 2021 and December 2021 and February 2022. Otherwise, the JACO Office staff maintained hybrid working patterns, attending the office for approximately two days per week. The JACO Office now, in the vast majority of cases, relies on electronic files and the JACO relies exclusively on electronic documents for his deliberations.

Whilst complainants whose cases had been passed for Full Investigation were provided with mobile contact details for the Investigating Officer assigned to their case, the JACO Office appreciates that the fact that it was unable to provide a full telephone service between April and July 2021 and December 2021 and February 2022 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 29 such call-backs in 2021/22, 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.

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 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 chance to comment.

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 2021, in April 2022. It was also sent to the JAC Chairman.

The JACO has continued his induction and met with key stakeholders, including the Senior President of Tribunals and the President of the Employment Tribunals in England and Wales. He also: met the Chair of the Judicial Appointments Commission; observed hearings remotely in the Property Tribunal and in person in the Social Security Tribunal; met with members of an Advisory Committee; and commenced regular meetings with the Deputy Director of the JCIO.

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 remains conscious of the need to seek to communicate better what the JACO can and cannot do, in order to better manage complainants' expectations. Therefore, the JACO Office continues to work on raising awareness and understanding of the JACO's remit. In 2021/22, in order to achieve this, the JACO Office:

- Began issuing an updated version of its Judicial Conduct Investigations Process guidance leaflet.
- Updated and began issuing a new version of its Judicial Conduct Investigations Process complaint form.

- Updated information on the gov.uk website which was potentially misleading about the JACO remit.

It was not possible to progress updates to the JACO website, including publication of the new leaflet and form on this site in 2021/22, but the JACO Office is committed to ensuring that these changes are taken forward in 2022/23.

Reasonable Adjustments

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”). However, in accordance with the JACO’s Reasonable Adjustment policy, which was published in March 2022, the JACO office is committed to ensuring that people with disabilities and long-term conditions are not disadvantaged in accessing its services. It seeks to alert people to this policy and offer assistance when people first make contact. As part of this, the JACO Office may agree to meet or speak to 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 2 such meetings in 2021/22.

Compliments and complaints received

The JACO Office is aware that there have been several instances in which the level of service provided (as opposed to concerns about the JACO’s decisions) fell below the level expected in 2021/22.

The main issues which caused this to happen included:

- 6 instances in which correspondence was simply “missed”, leading to a delay in responding. A contributory factor in 1 of these was the time taken for post sent in by Royal Mail to reach JACO Office staff. Other contributory factors were a complainant making multiple complaints at the same time resulting in one of them being overlooked and a lack of clarity about whether issues raised by a complainant fell within the JACO’s remit.

- 3 instances in which the JACO reiterated apologies offered by JACO Office staff for the delay in progressing further investigations, which was due to the pressure of competing priorities and heavy workloads.
- 1 instance in which the JACO Office apologised for addressing a complainant in a format that they objected to.

The JACO and the JACO Office also received compliments from complainants and others during 2021/22. These included observations from:

- 1 complainant that was grateful for the former Senior Investigating Officer's patience, sensitivity and understanding and for the information provided.
- 1 complainant, whose case was concluded by way of a Preliminary Investigating Report, that said that the JACO's report was "well researched" and provided the complainant with closure.
- 2 complainants who appreciated the help that they had been given.
- 1 complainant, whose case had not been upheld, who thanked the office for taking on the case and for providing "very detailed analysis".
- 1 complainant, who had been told that the matters they had raised fell outside the JACO's remit, who appreciated that they had been kindly and professionally advised of this.
- 1 complainant that was grateful for all the Investigating Officer's "efforts and regular updates".

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 other Arm's Length Body groups discussing matters such as Risk Management, Business Continuity, Training, 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 maintained 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 2021/22 was £454k; there was no increase in budget from 2020/21. The outturn expenditure was approximately £441k, an underspend of £13k. The JACO Office's outturn expenditure has been less than budgeted for 17 consecutive years. More than 95% of outturn expenditure was in respect of staff costs, including the JACO'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 £10K in respect of legal fees, compared to the £12K budgeted. The JACO Office was aware that there were some invoices for legal assistance provided by the Government Legal Department during 2021/22, which had not been received by the end of March 2022.

The JACO Office did not make any ex-gratia payments during 2021/22.

The JACO Office budget for 2022/23 is £512k; there is an increase of £58K from 2021/22; which includes, following the approval of a business case, funding for an additional Investigating Officer. 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 2022/23 might exceed that amount.

Staff resources

The JACO holds a public appointment. There were no instances during 2021/22 in which the Lord Chancellor appointed a Temporary Ombudsman to consider a specific case.

The JACO Office has sought assistance from the Government Legal Department where necessary but has not engaged any other consultants or agency workers during 2021/22.

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 structure of the JACO Office changed during 2021/22 with the retirement of one of the Joint Heads of Office, who was also the Senior Investigating Officer, and another very experienced Investigating Officer. The Joint Head of Office/Senior Investigating Officer role was filled internally on the promotion of an existing Investigating Officer and two new Investigating Officers joined the team following an external selection exercise; the number and grading of staff remains unaltered. The office comprises of two Band B Joint Heads of Office (one being the Business Manager and the other a Senior Investigating Officer 1.8 Full Time Equivalent); 5 Band C Investigating Officers and a Band E Administrative Officer (see Annex C). As mentioned above, JACO has been provided, within the 2022/23 budget with additional funding to facilitate recruitment of an additional Investigating Officer.

The JACO Office lost, on average, less than 3 days per member of staff to sickness during 2021/22.

The JACO Office made no compensation or exit payments during 2021/22.

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 2021/22, as a result of the COVID 19 pandemic, and consistent with Government instructions, the JACO staff worked between April and July 2021 and December 2021 and February 2022, 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 crisis also created difficulties in the processing of post received via Royal Mail. This unavoidably meant that it took longer than would have been the case for such correspondence to reach the JACO Office. 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.

During 2021/22, the JACO Office did not lose any days as a result of staff having the COVID 19 virus, nor were any days lost due to increased caring responsibilities.

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 or are working towards obtaining a BTEC Advanced Professional Award in Complaints Handling and Investigations. In 2021/22, JACO staff undertook training in Fraud Risk Assessment, Business Continuity modelling and Finance.

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 commenced 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 the 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, however, with the return to the office it is planned that this project will be resumed.

The JACO Office is its own data controller and is separately registered as such, rather than being included within the MoJ's registration with the Information Commissioner's Office.

There were 3 information breaches in 2021/22:

- In 1 instance a complainant who had requested an electronic copy of reports in their 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 a member of HM Courts and Tribunals Service staff. 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.

- 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, who was listed above the JACO Office member of staff on the MoJ's global address list. 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 included correspondence which is not explicitly a request for information but which the JACO Office interpreted as one. The JACO Office considered 23 such requests during 2021/22 – including requests that decisions made be reconsidered. It is committed to disclosing whatever can be done appropriately 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, involving the scrutiny of a large volume of information and legislation and guidance that is not part of the JACO statutory remit.
- The fact that the JACO Office has been largely unstaffed for significant periods during the reporting period of this Report has impacted this task as it has been more difficult to access the large scale printing and reprographic facilities that are sometimes 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

A: 2021/22 Statistics**Breakdown of complaints received**

	Total number of complaints & enquiries received	Appointment-related cases received	Conduct-related cases received	Other enquiries received
APRIL	137	0	52	85
MAY	135	1	60	74
JUNE	137	1	69	67
JULY	140	0	72	68
AUGUST	125	0	60	65
SEPTEMBER	107	2	49	56
OCTOBER	130	2	60	68
NOVEMBER	137	1	43	93
DECEMBER	96	0	40	55
JANUARY	117	2	54	61
FEBRUARY	103	0	45	58
MARCH	105	2	40	63

	Total number of complaints & enquiries received	Appointment-related cases received	Conduct-related cases received	Other enquiries received
TOTALS	Number of complaints & enquiries received 1,469	Appointment related cases 11	Conduct related cases 644	Other enquiries received 813

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
257	182	70	6

Breakdown of cases finalised

	Cases dealt with at Stage 2: Preliminary Investigation	Cases passed to Stage 3: Full Investigation but then dealt with as Stage 2: Preliminary Investigation	Cases dealt with at Stage 3: Full Investigation	Total
Appointment Process (JAC)	1	–	5	6
Conduct Investigation (JCIO)	121	10	41	172
Conduct Investigation (Tribunal)	56	2	11	69
Conduct Investigation (Tribunal and JCIO)	–	–	1	1
Conduct Investigation (Advisory Committee)	3	–	3	6
Conduct Investigation (Advisory Committee and JCIO)	–	–	5	5
Total	181	12	66	259

Breakdown of cases investigated, determined and finalised following a Full Investigation

	Not Upheld	Upheld and Partially Upheld	Total
Appointment	5	0	5
Conduct Investigation (JCIO)	31	10	42
Conduct Investigation (Tribunal)	11	0	11
Conduct Investigation (Tribunal and JCIO)	1	0	0
Conduct Investigation (Advisory Committee)	2	1	3
Conduct Investigation (Advisory Committee and JCIO)	4	1	5
Total	54	12	66

B: Case Studies

Case Study 1 (JCIO)

The complainant asked the JACO to review the investigation by the JCIO of their complaint about the personal conduct of a judge.

Following a remote hearing to determine whether the complainant, who reported mental ill-health, could remain in their parental home; the complainant made a wide-ranging complaint to the JCIO about the judge. The complaint included that the judge: had said the complainant was 'playing the suicide card' in response to their evidence in support of remaining in the parental home. The JCIO rejected the complaint under Rule 8 of the Judicial Conduct (Judicial and other office holders) Rules 2014 on the basis that it did not contain an allegation of misconduct. The complainant wrote to the JCIO explaining why they disagreed with the decision, including that they were aware of another complaint where the judge had been disciplined for commenting on the appearance of a party before them, which they said was no different to the circumstances of their complaint.

The complaint to the JACO included that the JCIO had failed to conduct a proper investigation.

When the JACO first considered the complaint, he asked the JCIO if it had assessed whether the reported language used might raise a question of misconduct. The JCIO informed the JACO that it would withdraw its decision and reconsider the complaint. The complaint to JACO was then put on hold pending the JCIO's reconsideration of the issues raised. The JCIO: wrote to the complainant; apologised for wrongly rejecting the complaint; and set out how it intended to proceed, which included listening to the audio recording of the hearing. Having listened to the audio recording and taken account of further information provided by the complainant, the JCIO found that, taken in context, the comment was made in support of the judge's view that the complainant was attempting to manipulate the situation, despite steps taken to put safeguarding measures in place. The JCIO acknowledged that, whilst the complainant may have found the comments offensive, they were case management issues that it could not question. The JCIO dismissed the complaint under Rule 21(f) on the basis that, even if true, it would not require any disciplinary action to be taken.

The complainant subsequently expanded the complaint to the JACO to include that the JCIO did not explain why a complaint in another, similar, case had resulted in a disciplinary sanction whereas their complaint had not.

The JACO upheld the complaint insofar as its handling of the original complaint was concerned. He found the JCIO had not followed an appropriate process when it rejected the complaint under Rule 8 because it had not considered whether the language, reportedly used by the judge when he said the complainant was 'playing the suicide card', raised a question of misconduct. The JACO was also concerned that the JCIO had missed opportunities offered by the complainant and his office to rectify the position. He made a finding of maladministration that rendered the decision to reject the complaint as unsafe. However, he did not set the decision aside using his powers under Section 111(5) of the Constitutional Reform Act 2005 because the JCIO had decided to withdraw the decision and look at the complaint again.

The JACO was satisfied that the JCIO's handling of the reopened complaint was in accordance with the Rules and guidance and he did not make a finding of maladministration. The JACO found that it would have been better had the JCIO made it clear to the complainant that each case is considered on its merits and although they believed that the circumstances of another complaint which resulted in a disciplinary sanction were closely linked, it did not automatically follow that their concerns raised a question of misconduct.

The JACO made no recommendation for redress because the JCIO apologised unreservedly to the complainant when it wrote to inform them that it had withdrawn the decision and it would reconsider the complaint.

Case Study 2 (JCIO)

The complainant asked the JACO to review the investigation by the JCIO of his complaint against a High Court Judge, who had been involved in his Civil proceedings.

The complainant submitted a complaint via the JCIO Portal. They received an automated email to say that their complaint had been allocated to a caseworker who would be in touch in due course. The JCIO considered the complaint and then uploaded a response letter via the portal. It said that, in accordance with Rule 11, complaints had to be made within 3-months of the matter complained of and that their complaint was out of time. It asked them to provide their reasons for making their complaint out of time within 10 business days or the complaint would be automatically dismissed. Subsequently, it was only four months later when they logged into the portal that they saw the JCIO's request for representations to extend the time limit and the closure of the case based on the absence of their response. The complainant submitted a portal comment to the JCIO asking why they were not informed that the matter had been dismissed and requested an extension of time to respond to the request for their out of time reasons. The JCIO responded and explained that an automatically generated email was sent to the address they registered to their account which informed them that a change had been made and that they should access the complaints portal to check. The JCIO said it would not, therefore, extend the out of time reasons deadline.

The complainant subsequently complained to the JACO that the JCIO failed to send them the automated email as they had not received it and that it was, therefore, unfair for the JCIO to not have extended the deadline in the circumstances and investigated their complaint fully.

The JCIO provided the JACO with evidence to demonstrate that an automated email was sent to the complainant and that the decision letter was uploaded to the portal on the same date. It was, therefore, not clear why the complainant did not receive the email. The JACO did not uphold the complaint as he did not identify maladministration with the portal system given the evidence provided by the JCIO.

However, the JACO then took the time to consider the overall consequence of the complainant: not receiving the automated email prompt; not having the opportunity to provide his out of time representations; and the impact this had on the outcome of his complaint. The JCIO told the JACO that the only matter in the original complaint the caseworker initially identified as being a matter that might amount to misconduct, if substantiated, was that the judge had fallen asleep. It was on this basis that the complainant's out of time representations were sought. However, in response to the JACO's enquiries, the JCIO reviewed the case and confirmed that the complaint was actually that the judge had not understood some of the information presented to him "as if he had fallen asleep". Its view was that this was an analogy rather than a complaint that the judge had actually fallen asleep. On review, the JCIO was satisfied there were no matters that the complainant had raised that could be taken forward by the JCIO as matters of judicial misconduct in any event and that the matters raised related solely to judicial decisions. The JACO was satisfied that this subsequent assessment was consistent with legislation and guidance.

Case Study 3 (Tribunal)

The complainant asked the JACO to review the investigation by a Tribunal President of their complaint about the personal conduct of a First-tier Tribunal Immigration and Asylum (IAC) judge.

The complainant, a legal representative attended a hearing in support of their client, the Appellant. Following the hearing, the complainant made a wide ranging complaint to the President that the Tribunal Judge had: used inflammatory, derogatory and humiliating language when he commented on the quality of the complainant's submissions; raised his voice and interrupted them but did not interrupt the Respondent which, they said, affected their ability to properly present their client's case; and refused to apologise when challenged on his actions by the complainant.

The President delegated the investigation of the complaint to a Resident Judge who obtained comments on the complaint from the Tribunal Judge and third parties present at the hearing and provided their findings and recommendation to the President. The President found that although the judge had interrupted the complainant, it had been for a legitimate reason and took the view that, on the balance of probabilities, the complaint did not raise a question of misconduct.

The complaint was dismissed under Rule 34(b) of the Judicial Conduct (Tribunals) Rules 2014 on the basis that it was about judicial decisions and case management and did not raise a question of misconduct and Rule 34(g) on the basis that it was untrue, mistaken or misconceived.

The complaint to the JACO included that the Resident Judge had failed to conduct a proper investigation because they had not allowed the complainant to see all the evidence or given them the opportunity to comment on the responses from the judge or third parties.

Having considered the evidence, the JACO did not uphold the complaint. He was satisfied that, whilst there may be a legal right to see the documents under the Data Protection Act 2018 and associated “access” legislation, the Rules did not provide for this information to be disclosed. The JACO found that the judge’s response to the complaint and third party comments were accurately reflected in the President’s explanation of why the complaint fell to be dismissed and it was clear that the responses formed part of the evidence considered when making the decision to dismiss the complaint. The JACO determined that the President had followed an appropriate process that was consistent with the prescribed procedures.

Case Study 4 (Tribunal)

The complainant asked the JACO to review the investigation by a Regional Employment Judge (REJ) of their complaint against the conduct of an Employment Judge (EJ).

The complainant was the claimant in Employment Tribunal (ET) proceedings before the EJ. They wrote to the ET President and raised concerns about the EJ, including that the EJ: did not treat them fairly or respectfully; showed bias in favour of the Respondent; and rudely said words to the effect that they should “calm down, don’t get excited” during the proceedings.

The ET President passed the matter to the REJ to consider under the Judicial Conduct (Tribunals) Rules 2014. The REJ subsequently investigated the matter and dismissed the complaint under Rule 34. The REJ concluded that: the allegation about the rude comment was without substance or even if true, would not require any disciplinary action to be taken; and the rest of the allegations were about judicial decisions or judicial case management, and raised no question of misconduct.

The complainant complained to the JACO that the REJ failed to properly investigate his complaint:

- About the EJ’s rudeness because they had not: listened to a recording of the hearing; requested more information from them under Rule 35; or sought any independent source of information under Rule 36.
- About the EJ being biased as they had: categorised their concerns as being matters of case management rather than of conduct; and failed to carry out any analysis of whether the EJ had been guilty of bias and, therefore, of misconduct.

In respect of the REJ's handling of the allegation of the EJ's bias, the JACO was satisfied that the REJ could not have considered the way the EJ had managed the case or reviewed the decisions they made, to determine their motivation. This would essentially require the REJ to examine the evidence and come to a conclusion as to whether it was correct or fair or a result of any bias towards a party. The JACO viewed that this is not the role of a REJ under the judicial disciplinary proceedings and that such a challenge can only be made via an appropriate appeal. Subsequently, if on appeal, a higher court or tribunal was critical of a judge's actions to the extent it raised a question of misconduct, it could be considered under the disciplinary process at that stage. Overall, the JACO was satisfied that the REJ had explained that they had no power to change, set aside or hear the complainant's challenges or appeals against the decisions.

The JACO sought further information from the REJ in respect of their handling of the allegation of the EJ's rudeness. The REJ explained that they had not considered it necessary to make enquiries or listen to the recording as, in their view: the complainant had provided sufficient details of the nature of the complaint; the meaning of the complaint was clear; the complaint was about the words used rather than the way they were spoken; and the complaint fell to be dismissed as the words used would not amount to misconduct or would require any disciplinary action being taken.

After careful consideration, the JACO did not uphold the complaint. He was satisfied the REJ followed a reasonable and proportionate process when they investigated the matter and concluded the points the complainant made in respect of the EJ's conduct fell to be dismissed under Rule 34 (b), (e) and (f) of the Judicial Conduct (Tribunals) Rules 2014.

Case Study 5 (Advisory Committee and JCIO)

The complainant asked the JACO to review the investigation by an Advisory Committee (AC) and the JCIO of their complaint about the personal conduct of their neighbour, a serving magistrate.

The complainant and the magistrate had been involved in a historic dispute in respect of building work and associated planning and boundary issues. The complainant raised concerns that the magistrate had: abused their powers for personal gain; lied to the local authority planning office; and sent a third party, who was acting as a “intermediary” in the dispute, threatening text messages.

The AC agreed to investigate the complaint and sought comments from the magistrate complained about. The AC Chairman considered all the information and decided the matter should be referred to a Conduct Panel for further investigation. The Conduct Panel hearing took place via Microsoft Teams. The magistrate and the third-party intermediary were invited to provide oral evidence. The complainant was informed that they were not required to provide oral evidence at the hearing as they had already set out their substantive complaint in writing.

The AC sent the Conduct Panel’s draft report to the magistrate for their comments which they responded to within the timescales provided. The AC then submitted its report to the JCIO. The JCIO considered the report and sent its submission to the Lord Chancellor and the Lord Chief Justice’s delegate who considered the matter. They found that the magistrate’s actions did not amount to misconduct.

The JCIO informed the complainant of the outcome. It said that the Lord Chancellor and Lord Chief Justice’s delegate had dismissed the complaint and decided that misconduct had not been established and that the matter would be dealt with informally by way of informal advice to the magistrate.

The complainant complained to JACO that:

- The investigation process had not been conducted fairly and appropriately in accordance with set procedures.
- They were left out of the communication process. They were not given the opportunity to provide oral evidence to the Conduct Panel at the hearing.

The JACO did not uphold the complaint. The JACO was satisfied that the AC and the JCIO followed the relevant legislation and guidance in its investigation of the complaint against the magistrate. He found:

- The AC took the complaint seriously, considered the points the complainant initially raised and asked him to clarify certain aspects of it.
- The AC Chairman considered all the relevant information under Rule 36 in order to determine whether the matter should be passed to a Conduct Panel. The AC also followed the correct process under Rule 38 by providing the magistrate with the details of the complaints against them and giving him the opportunity to respond.
- The constitution of the Conduct Panel was in accordance with the requirements of Rule 53. The panel met in advance of the hearing. The panel determined that the written evidence of the complainant could be considered without the need for them to attend the hearing, but determined that there were points of clarification it required from the third-party intermediary at the hearing.
- Each member of the Conduct Panel was provided with copies of all the relevant documentation (including written statements, audio clips, and photographs). Rule 69 requires that a full note of the hearing is taken. However, in this case, given that the matter took place via Microsoft Teams, a recording of the hearing was made instead. This is a full and detailed record of proceedings.

- The Conduct Panel did not draw any conclusion nor make any findings on the merits of the dispute between the complainant and the magistrate. It specifically narrowed the issues down to only considering whether in any of the identified issues, there was a breach of the magistrate's declaration and undertaking amounting to misconduct.
- In accordance with Rule 71, the Conduct Panel set out the facts in dispute and the facts not in dispute and the Conduct Panel report was drafted in accordance with Rule 79. In accordance with Rule 83, the report was subsequently sent to the magistrate and they responded.
- In accordance with Rule 86, the AC sent the Conduct Panel's report to the JCIO. The JCIO examined the papers, under Rule 96, and ensured that all the necessary information was included and that the correct process had been followed. It subsequently sent the report and advice to the Lord Chancellor and the Lord Chief Justice's delegate.
- The Lord Chancellor and the Lord Chief Justice's delegate decided that whilst the magistrate had acted rashly by making unguarded comments about the complainant to the third-party intermediary, they were not convinced that their actions were sufficiently serious to call for a finding of misconduct. The statutory regulations provide for the Lord Chancellor and Lord Chief Justice's delegate to dismiss a complaint and to deal with the matter informally, and the magistrate was subsequently provided with informal advice about their future conduct.

The JACO was content that the process followed by the AC, the JCIO and the Lord Chancellor and the Lord Chief Justice's delegate was consistent with legislation and guidance and he did not identify any maladministration of the regulated disciplinary function.

Specifically, the JACO appreciated that the complainant may have felt left out of the communication process as they was not required to given verbal evidence at the hearing. However, he was satisfied that the Conduct Panel's approach of only seeking oral evidence from the third party intermediary and magistrate was in accordance with the Rules and that it had before it sufficient evidence to determine the complaint.

Case Study 6 (Advisory Committee)

The complainant asked the JACO to review the investigation by an Advisory Committee (AC) of their complaint about the personal conduct of a serving magistrate.

The complainant, a legal representative, attended a hearing in the Magistrates Court. In their complaint to the AC Secretary they explained that their client had been late attending court and they had asked for extra time to take instructions prior to the hearing. An initial extension was granted but when they asked for a further extension, the complainant said they had been called into court to explain the delay. Following the hearing, the complainant raised concerns that a Magistrate: said they were “taking up their time”; directly criticised their client for arriving late; ignored their explanation; and criticised them in open court, which had upset both the complainant and their client.

The AC referenced Rule 12 of the Judicial Conduct (Magistrates) Rules 2014 and asked the complainant to provide specific details of what the Magistrate had said that had been rude or critical, indicating that the complaint, as it stood, appeared to be about judicial decisions and case management and did not raise a question of misconduct. The complainant asserted that the complaint concerned conduct and there was no complaint about the judicial decision. The AC sought comments from the Legal Advisor present at the hearing. The Legal Advisor had previously sent a detailed account of events to their line manager after the hearing and this was provided to the AC, and considered, before the complaint was dismissed under Rule 32(b) on the basis that it concerned judicial decision making and case management and raised no question of misconduct.

The complainant told the JACO that the AC had failed to conduct a proper investigation because it:

- Did not acknowledge misconduct by the presiding justice and focussed on the complainant's conduct which, they said was professional and courteous at all times.
- Continued to state the complaint related to case management which was an incorrect approach.

Having considered the evidence, the JACO did not uphold the complaint. He was satisfied that the AC had followed an appropriate process in line with legislation and guidance. He found that it was reasonable for the AC to seek further details from the complainant, including the name of the Magistrate(s) concerned, and to accept the complaint when the complainant asserted they had provided all the required information. In the circumstances, the JACO concluded that it was reasonable for the AC to have sought the Legal Advisor's recollection of events. It was not, as the complainant thought, that the Legal Advisor's comments had been sought as a result of the complaint but they had been provided to their line manager immediately following the hearing because of the events that occurred and as such provided a contemporaneous record which was considered in determining whether the Magistrate's actions amounted to misconduct.

The JACO appreciated that the complainant believed that the events occurred as they described but found that the fact that they believed it amounted to misconduct did not mean that there were matters that required further investigation under the Rules. Rather, it was important that the AC took appropriate and proportionate steps to ascertain whether the Magistrate's actions might amount to misconduct. The AC followed a process that was consistent with the Prescribed Procedures in concluding that the complaint concerned the decision making and case management of the hearing and did not raise a question of misconduct.

Case Study 7 (JAC)

A candidate for judicial office asked the JACO to investigate how the JAC handled their application for appointment in a Selection Exercise and their subsequent complaint.

In the Selection Exercise in question, there were two online stages – a qualifying test and a scenario test – before candidates were asked to submit an application form and invited to attend a Selection Day. The complainant completed the qualifying test and was invited to sit the scenario test. They made a request for a reasonable adjustment and accepted the offer of 25% extra time to complete the test. Following the test, the candidate made a further request for a reasonable adjustment as they had exceeded the time allocated due to their medical condition worsening as a result of the test. This was declined and they were advised that their application would not be taken further. A complaint regarding this was made to the JAC but was not upheld.

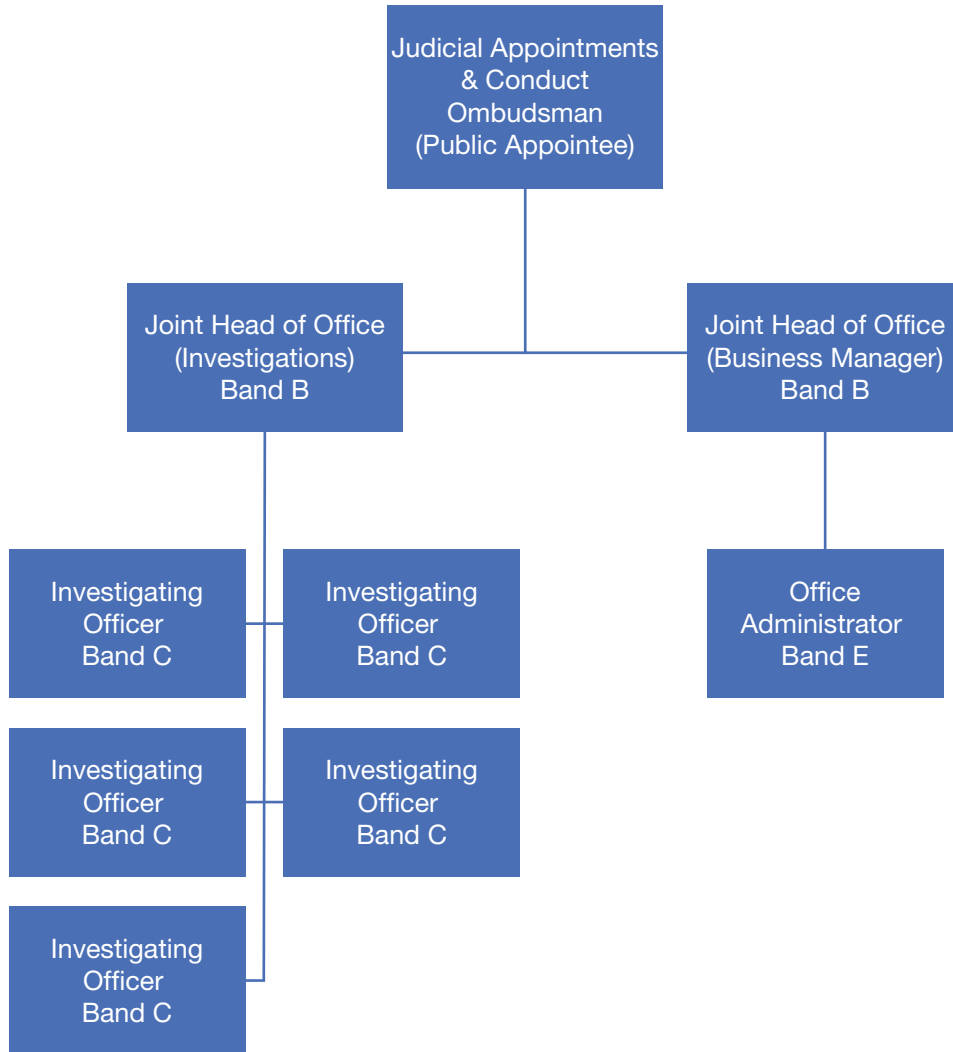
The candidate complained to the JACO that the JAC: would not consider a further reasonable adjustment, in light of the circumstances experienced on the day, because it had already previously agreed to a reasonable adjustment. The complainant argued this contradicted the purpose of a reasonable adjustment policy because it failed to assess the need for a reasonable adjustment during the test, and whilst the second reasonable adjustment application was submitted sometime after the test had taken place, it should not have prevented consideration of the further request.

The complainant argued that the JAC would not entertain any request received after the test had been completed. The JAC initially told them that it could not take any extra considerations into account after the test had finished. It later explained that it was not the JAC's policy to accept late requests for a reasonable adjustment unless there were exceptional reasons and that the request was made within a realistic time frame. It explained that, in this instance, it did not consider making a further request for a reasonable adjustment, a month after sitting the Scenario Test, to be reasonable. The JAC took the view that the complainant had agreed the original reasonable adjustment and to alter it sometime after the event would be unfair on other candidates. The JACO noted:

- The JAC provided extra time, under the reasonable adjustment policy, and that this had been accepted.
- The request for further time had been fully and carefully considered but it was concluded that exceptional circumstances had not been demonstrated to warrant a further extension to the existing 25% addition to the test time limit.
- There were presumably a limited number of spaces available to candidates to attend the Selection Day and to agree a second reasonable adjustment, more than a month after the Scenario Test, may have impacted on a candidate who had complied with the stated requirements. He could, therefore, understand that JAC's concerns that agreeing to a second request would be unfair.
- The decisions taken by the JAC appeared to be fair and in line with: its published general policy that candidates should request a reasonable adjustment before a Selection Exercise starts (although there is scope to request a reasonable adjustment as exercises progress); and specific guidance in this Selection Exercise, which asked candidates to request a reasonable adjustment by a specified date.

Overall, the JACO was content that the decision to reject the application was not unfair or inconsistent with the principle of selection on merit. He had no concerns about the JAC's handling of the complaint and did not uphold the complaint.

C: JACO Office structure (March 2022)



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 (90%)
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>Partially 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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E: Forecast and Actual Expenditure

	FORECAST	ACTUAL
Staff costs and salaries	415,800	422,381
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	–	0
Legal costs	12,000	10,000
Total expenditure	454,000	441,350

F: Statistical Data (Full Investigations) 2016/17 – 2021/22						
Financial year	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22
Cases determined after Full Investigation	63	79	88	84	76	66
Conduct (JCIO, Tribunal, Advisory Committee)	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	12 upheld/ partially upheld 49 not upheld
Appointment	3 not upheld	6 not upheld	9 not upheld	2 not upheld	7 not upheld	5 not upheld
JACO's Time (Days per week)	2	2	2	2	2	2
Staffing	9 (8 FTE)	9 (8 FTE)	9 (8 FTE)	9(8 FTE)	9 (8 FTE)	9 (8 FTE)
Budget Forecast¹¹	412,000	418,000	423,000	445,000	454,000	454,000
Actual spend	373,000	403,000	409,000	434,000	447,000	441,000

¹¹ Budget figures rounded to the nearest £1,000.

