

Annual Report 2023-24



Judicial Appointments & Conduct Ombudsman
Annual Report 2023-24

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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.

¹ The Lord Chancellor and the Lady 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.

- Decide whether there has been a failure by the Investigating Body to follow prescribed procedures (The Judicial Discipline (Prescribed Procedures) Regulations 2023)² or some other maladministration.
- 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.
 - Make recommendations about how an Investigating Body can improve its handling of complaints.
 - Recommend payment of compensation for loss suffered as a result of maladministration by the Investigating Body.

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.

² The 2023 Judicial Discipline Regulations and supporting Rules apply to complaints made on, or after 13 October 2023. The 2014 Judicial Discipline Regulations and supporting Rules apply to complaints made before 13 October 2023.

Foreword

This is my fourth Annual Report. There has been an unprecedented number of staff changes in my Office in the last couple of years and I would like to thank the experienced members of staff for everything they have done to maintain the standards we set in dealing with complaints and complainants and assist in welcoming new investigators to the team.

I find I'm repeating myself, but feel the need to reiterate there is always much more behind the statistics in this report. Some investigations can be protracted and take many months to conclude. In some cases, intervention from my office early on can lead to matters complained of being swiftly dealt with by the Investigating Body.

A theme that has continued over the last year is our attempts to streamline processes where possible and make information about my remit as clear as we can to complainants. I know it can be very frustrating for some complainants who want to complain only to find their issue is beyond my remit.

In terms of streamlining processes, the same can be said of this annual report and I am grateful to my Office for their efforts to make the report more concise for the reader.

Throughout the last year, I have also tried to manage expectations of complainants at an early stage in some cases where it is clear from the outset that only part of that complaint may warrant a finding of maladministration and should progress to a full investigation. In these instances, we have become much clearer on which parts can be taken forward at the outset.

I continue to be concerned about how some complainants have become very abusive when they perceive an injustice in the system. I repeat my message from last year; this is unacceptable, particularly when aimed at my Office. I am "independent" in my decision making and all investigations of complaints are concluded on the evidence, according to the rules in the Constitutional Reform Act, and nothing else. Abusive conduct and personal attacks have no place in the system. We now have an Unreasonable Behaviour Policy to deal with these matters.

In terms of complaints about judicial appointments, this area continues to attract few complaints and those that are received continue to undergo a thorough investigation process.

The JCIO implemented a new set of rules on 13 October 2023 – The Judicial Conduct Rules 2023. This has also resulted in the JCIO taking on extra complaints. Despite this, the incidence of maladministration continues to be low in comparison to the large volume of complaints they deal with.

My Office continues to provide feedback where possible if any trend in complaints is apparent. I am grateful for the Investigating Bodies acceptance of this feedback which is always intended to prevent further complaints on the same theme.

My Office has seen a 20% increase in the overall amount of correspondence received and dealt with this year. The number of complaints has also increased and I have considered 22% more cases overall, with a 25% increase in cases dealt with by way of a Preliminary Investigation. Those cases requiring a full investigation have been most impacted by the staff changes in my Office, with a 22% decrease in the number of cases concluded. However, my Office will be focusing its efforts on dealing with the outstanding cases in 2024/25.

Finally, whilst the rise in complaints continues to be a challenge, every one receives the care, attention and consideration a complainant should expect and we remain committed to meeting our challenges throughout the next year.

Douglas Marshall

Performance

This chapter provides information about the: process followed in handling enquiries and complaints; volume received; stage they were concluded; outcome of complaints; and extent to which the JACO Office (hereafter, referred to as “the Office”) has met its targets.³

Summary

In comparison to the financial year 2022/23, the Office:

- Received 102%⁴ more correspondence that could be classified as an enquiry or a complaint (3028 pieces compared to 1496).
- Considered 22% more cases to determine whether issues were within the JACO’s remit warranted further investigation (292 compared to 240).
- Concluded 25% more cases by way of Preliminary Investigation (256 compared to 205).
- Concluded 22% less cases by the JACO following a Full Investigation (39 compared to 50).
- Upheld or partially upheld 29% less complaints (10 compared to 14).

In relation to its targets, the Office:

- Achieved all the targets set out in the 2023/24 Business plan (see Annex D).
- Exceeded its 90% target in relation to Preliminary Investigation reports. It provided an initial decision within 6 weeks of receiving enough information to consider the complaint within 98% of cases.

³ Percentages used in this section have been rounded to the nearest whole percentile point.

⁴ It is not uncommon for people who contact the JACO Office to send multiple emails on the same business day. Previously, these were treated as one piece of correspondence. From April 2023, all correspondence is counted to reflect that each piece requires reading, even if no response is required. Therefore, this change explains the increase in the amount of correspondence received.

- Exceeded its 98% target in relation to keeping complainants updated. It provided a monthly update to complainants in 99% of cases.
- Achieved its target of acknowledging receipt of 98% new complaints and correspondence in 5 working days.
- Achieved its target of handling 90% of correspondence within 15 working days.

The Office remains committed to providing a high level of customer service in 2024/25. Our aims for next year include:

- Onboarding and training one new staff member to decrease the impact of understaffing on the Office.
- Filling the Senior Investigating Officer post.
- Analysing the impact on JACO of the Judicial Conduct Rules 2023⁵ and Judicial Conduct (Magistrates) Rules 2023.⁶
- Reviewing the online conduct complaints form and leaflet for appointment complaints.
- Reviewing the uptake of the online complaints form.
- Reviewing the current timescale for responses from the Lord Chancellor and the Lady Chief Justice.
- Reviewing JACO internal processes to increase efficiency.
- Reducing the overall time taken to conclude Full Investigations.

Case work process

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

Initial Check

The Office receives enquiries by telephone, email and post and aims to acknowledge all enquiries within 5 working days of receipt. The Office then carries out initial checks to determine whether it

⁵ These Rules replaced the Judicial Conduct (Judicial and other office holders) Rules 2014 and the Judicial Conduct (Tribunals) Rules 2014 on 13 October 2023. Hereafter, the 2023 Rules.

⁶ These Rules replaced the Judicial Conduct (Magistrates) Rules 2014 on 13 October 2023. Hereafter, the 2023 Rules.

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 concluded.⁷ If this is not the case, and the enquiry has not been addressed by information contained in the Office's automatic email acknowledgment, then the 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 Office has sought and received any further information needed to progress the complaint, it is passed for a Preliminary Investigation.

Preliminary Investigations

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 Investigation.⁸ The Office obtains the complaint papers from the Investigating Body. Based on these and the complainant's correspondence, it prepares advice for the JACO to consider. The JACO decides if the case must be passed for a Full Investigation based on whether:

- 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 Investigating Body's decision.⁹
- The complaint has been made in a form approved by the JACO.

7 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).

8 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 view.

9 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.

If any of the above criteria are not met, the Office provides a letter or Preliminary Investigation Report 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 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 Office managing its workload within the allocated resources, enabling it to concentrate on the cases where there are issues that require more detailed analysis.

Full Investigation

Full Investigations involve a 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.

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 Lady Chief Justice (in respect of Judicial Conduct matters) or the JAC Chairman (in respect of Judicial Appointments matters) and to consider their comments.

Most Full Investigations, when the Office is fully staffed, are completed within 6 to 9 months. More complex investigations may take longer. The 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 Lady 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 Office received 20% more correspondence than in 2022/23.

The Office received 4066 individual pieces of correspondence during 2023/24, the majority received electronically.

Enquiries and complaints received

The Office received 102% more correspondence than in 2022/23 that could be classified as either an enquiry or a complaint.

Of the 4066 pieces of correspondence, 3029 were enquiries or complaints. This reflects a 102% increase from the 1496 enquiries and complaints received in 2022/23.

Performance against targets

The Office met its targets to acknowledge receipt of new complaints and correspondence within 5 working days of receipt in 98% of cases and to deal with correspondence within 15 working days in 90% of cases.

This was largely achieved through the automatic acknowledgement of correspondence received by email.

Initial Checks

65% of the checks, enquiries 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.

Outcome of the initial checks

Of the 3029 enquiries and complaints, 1966 were found to fall outside the JACO remit or were otherwise not taken forward, reflecting 65% of the total enquiries and complaints received. This represents an 85% increase on the number of enquiries and complaints not taken forward in 2022/23.

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 Office is regularly contacted by people raising issues about matters they have been involved in. These commonly include concerns about:

Issues arising from court or Tribunal cases.

- Observations about those involved with court cases, such as solicitors, barristers, and HM Courts and Tribunals Service staff.
- Judicial Office Holders.
- Issues relating to other government departments or local authorities.

Correspondence also included concerns about Investigating Bodies which could not be taken forward. If it is possible that those concerns may lead to a matter that the JACO can consider, the Office will: ensure that potential complainants are aware of the JACO remit; explore whether they wish to pursue concerns with the JACO in light of that remit; and, if so, explain what is needed. However, some correspondence cannot be progressed because:

- The complaint to the Investigating Body has not yet been concluded and the delay has not exceeded six months.
- 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 complainant, having been given an opportunity to do so, does not provide the required “permission to disclose”.

Preliminary Investigations

Volume Considered

The JACO considered 22% more cases, to determine whether issues within his remit warranted further investigation, than in 2022/23.

The JACO considered 292 cases relating to his Judicial Conduct Investigations remit to determine whether issues within his remit warranted further investigation.

| | 2019/20 | 2020/21 | 2021/22 | 2022/23 | 2023/24 |
|--------------------------------|---------|---------|---------|---------|---------|
| Number considered | 268 | 235 | 272 | 240 | 292 |
| Number concluded by PIR | 182 | 144 | 192 | 205 | 256 |
| % of number considered | 68% | 61% | 71% | 85% | 88% |

Outcome of Preliminary Investigations

The JACO concluded 25% more cases by way of a Preliminary Investigation Report than in 2022/23.

Of the 292 considered:

- 256 (88%) were concluded by a Preliminary Investigation Report.
- 36 (12%) were passed for Full Investigation.

The number of cases concluded by Preliminary Investigation Report is the highest it has been in the last 5 years. This is due to an overall increase in the number of complaints received, including an increase in complaints to the JACO following the implementation of the 2023 Rules.

Overall cases concluded by a Preliminary Investigation Report by Investigating Body:

- 174 (68%) were about matters considered by the JCIO (+ 37%).
- 73 (29%) were about matters considered by Tribunals (+0%).
- 9 (4%) were about matters considered by an Advisory Committee (+80%).

Cases concerning the 2023 Rules concluded by a Preliminary Investigation Report

Of the 256 cases concluded by Preliminary Investigation Report:

- 58 (23%) were about matters considered by the JCIO.
- 1 (<1%) concerned a matter considered by an Advisory Committee.

Cases concluded by a Preliminary Investigation Report by Reason:

- 248 (97%) were concluded as the JACO found there was no prospect of finding maladministration.
- 8 (3%) 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 Bodies decision and it was not appropriate, in all the circumstances, to accept the complaint “out of time”.

No cases were concluded on the basis that they had not been made in a form that the JACO had approved.

Performance against targets

In 98% of Preliminary Investigations, the Office provided a decision within 6 weeks of receipt of the Investigating Body’s papers, or enough information to determine the complaint.

This was achieved in 251 (98%) of cases, against a target of 90%.

In the remaining 5 (2%) cases, the outcome was outside the targets response time as further enquiries with the Investigating Bodies were necessary.

Full Investigations

Volume determined

The JACO concluded (22%) less cases following a Full Investigation than in 2022/23.

| | 2019/20 | 2020/21 | 2021/22 | 2022/23 | 2023/24 |
|--|---------|---------|---------|---------|---------|
| Volume Concluded following a Full Investigation | 84 | 76 | 66 | 50 | 39 |

The JACO concluded 39 cases following a Full Investigation during 2023/24. This is a 22% decrease from the figure of 50 in 2022/23.

Complaints determined by Investigating Body.

Of the 39 cases which the JACO determined under his Judicial Conduct Investigations remit following a Full Investigation:

- 21 concerned matters considered by the JCIO.
- 8¹⁰ concerned matters considered by Tribunal Presidents (or, their delegates).
- 6 concerned matters considered under the Judicial Conduct arrangements by an Advisory Committee, including matters which were referred to the JCIO for further consideration.
- 4 concerned complaints considered by the JAC.

¹⁰Two cases encompassed a total of eight complaints to the Investigating Body.

In addition:

- There was 1 instance during the year where a case referred for further investigation was concluded without a Full Investigation as it became clear, during the further investigation process, that there was no prospect of the JACO finding maladministration.
- There was 1 instance where the JACO issued an addendum to his report following the receipt of new information.
- At the end of March 2024, there were:
 - 3 cases in which the JACO was awaiting responses to referred reports.
 - 4 cases on hold of which 2 were awaiting the outcome of a judicial review of the JCIO decision and 2 were being reconsidered by the JCIO following initial enquiries by the Office.

Time taken to conduct investigations

It has taken more time, than in 2022/23, to complete Full Investigations.

All 39 investigations concluded in 2023/24 took more than 6 months and 15 (39%) took less than 12 months. The remaining 24 (61%) took in excess of 12 months.

There were also 5 outstanding cases in which investigations had been ongoing for more than 12 months at the end of March 2024.

There were 38 cases with the Investigating Team in which draft reports had not formally been referred to the Lord Chancellor and either the Lady Chief Justice or the JAC Chairman. This is a 9% increase on the figure of 35 from 2022/23.

There are several factors that have contributed to the increase in the time taken to address investigations, including:

- A continued backlog of cases due, in part, to the impact of staffing issues on a small team.
- The complexity of the cases received.

- The unanticipated departure of two experienced members of staff that left the Office significantly understaffed between October 2023 and the end of the reporting period.
- The training of two new members of staff who joined in March 2023.
- In 12 cases, the length of time taken encompassed periods (ranging from 5 – 233 working days) where the cases were put on hold in either 2022/23 or 2023/24 in order to allow the Investigating Body to give further consideration to issues regarding the Judicial Office Holder's conduct.

In 2022/23, steps were taken to address concerns about both the time taken to conclude Full Investigations and the length and clarity of reports whereby the Investigating Officer continues to provide advice to the JACO, but no longer produces a report to be provided to the complainant, given that that this duplicated much of the content of the JACO's own report. This has continued in 2023/24, with 27 complainants receiving a single JACO's report.

Whilst the impact of understaffing in 2023/24 will continue to be felt in 2024/25, the increased experience of new staff who joined in March 2023 together with the anticipated filling of the remaining vacancies in the Office, it is hoped that progress will be made in reducing the wait times for decisions following Full Investigations.

Time taken to receive responses to referred draft reports

Overall, the time taken to receive responses to draft reports has decreased from that taken in 2022/23.

The JACO requests that a response is received within 8 weeks. In 2023/24:

- The proportion of cases in which a response was received in 8 weeks or less increased from 62% to 79%.
- A response was received in 4 weeks or less in 44% of cases.
- A response was received between 8 and 10 weeks in 21% of cases.

Performance against targets

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

The Office exceeded its target in keeping all complainants fully informed on a monthly basis in 99% of cases against a target of 98%.

The percentage of complaints upheld or partially upheld was 29% lower than in 2022/23.

The JACO upheld or partially upheld 10 cases, 1 fully and 9 in part. This amounts to 26% of the cases determined following a Full Investigation. This is 29% lower than the number upheld or partially upheld in 2022/23.

Cases upheld or partially upheld by Investigating Body

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

- 8 were in respect of an investigation conducted solely by the JCIO.
- 2 were in respect of an investigation conducted solely by a Tribunal President (or, their delegates).

The percentage of complaints not upheld was 74% of the total number of cases considered.

The JACO did not uphold 29 cases. This amounts to 74% of the cases concluded following a Full Investigation. This is 24% less than the number not upheld in 2022/23.

| | 2019/20 | 2020/21 | 2021/22 | 2022/23 | 2023/24 |
|--|---------|---------|---------|---------|---------|
| Cases Partially or Fully Upheld | 18 | 18 | 12 | 14 | 10 |
| Cases not Upheld | 66 | 58 | 54 | 36 | 29 |

Issues resulting in a finding maladministration

Overall, the incidences of maladministration have 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:

- Delays in concluding complaints.
- Concerns about case management and poor communication.
- Rejecting a complaint as not containing an allegation of misconduct.
- Failing to consider relevant information when dismissing the complaint.
- Missing opportunities, offered by post-complaint correspondence or initial enquiries by the JACO, to rectify process issues.
- Overlooking aspects of a complaint that might raise a question of misconduct.

*Redress*Apology

The JACO considered an apology was the appropriate redress in 10 cases altogether.

In 5 cases, which were upheld or partially upheld, the JACO found that an apology was the appropriate redress. However, he did not recommend it because: in 1 case, the Investigating Body had previously apologised; and in 4 cases the Investigating Body had already agreed to do so.

The JACO found that an apology was warranted in 5 cases in respect of matters which he did not uphold. However, he did not recommend any redress as the Investigating Body had previously apologised. The JACO welcomed this proactive approach.

Set Aside

The JACO did not use his powers to set aside a decision in 2023/24.

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 Investigating Body's decision unreliable.

The JACO did not set any decisions aside in 2023/24. However, in 3 cases, he would have set the decision aside, but the Investigating Body agreed to reconsider the issues that could have amounted to maladministration before the JACO concluded his report.

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 2023/24, the JACO did not make any recommendations to award monetary compensation.

Preventing a recurrence of concerns identified during JACO reviews

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

The JACO made a systemic recommendation in 3 cases. These concerned:

- The level of detail provided to complainants about disciplinary sanctions.
- A reminder to ensure correspondence is not open to misinterpretation.
- How the Investigating Body could better manage complainants' expectations where staff shortages led to a temporary change to internal procedures.
- The need to obtain a copy of a recording of a hearing itself even if the complainant has provided it in the course of making their complaint.

There was 1 case where the JACO would have made a systemic recommendation, but the Investigating Body had already addressed matters by reviewing: its processes for requesting particularisation; and the information available on its website about what is needed from complainants.

The JACO welcomed this proactive approach.

Issues that the JACO considered which did not result in a finding of maladministration can be found in Annex B: Themes.

Post investigation correspondence and challenges to JACO decisions

The JACO considers a limited amount of correspondence from people who are dissatisfied with the outcome of their complaints (following a Preliminary or Full Investigation).

During 2023/24, the JACO responded to:

- Approximately 46 pieces of correspondence sent in response to cases concluded following a Preliminary Investigation.
- Approximately 4 pieces of correspondence sent in response to cases concluded following a Full Investigation, including 3 cases where the complainant requested the JACO review his decision.
- 2 requests to review the decision not to fully investigate part of a complaint (split investigation).

The JACO did not change his decision as a result of post complaint correspondence or requests for a review of his decision.

There was 1 instance where the JACO finalised his report in the 2022/23 period and then reconsidered his decision following receipt of new information. In this instance, the JACO issued an addendum to his original report which reflected that the complaint was upheld. This was concluded in 2023/24.

There was an application for Judicial Review made in 2022/23 that remained outstanding at the end of March 2024.

There was 1 case where the complainant sought to judicially review the JACO's decision and permission to do so was refused.

In 2023/24, there was 1 case where the complainant brought a claim in the Employment Tribunal that remained outstanding at the end of March 2024.

In 2022, the Office instructed the Government Legal Department in response to allegations that the Office had breached the Equality Act 2010 in 2 cases. These cases were concluded in 2023/24 and no findings were made against the Office.

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.

There were 3 complaints about the Judicial Appointments process outstanding at start of 2023/24.

The Office received 6 complaints for investigation in 2023/24, of which 1 was not taken forward for investigation because it fell outside the JACO's remit.

Overall, the JACO concluded 4 complaints about the Judicial Appointments process in 2023/24. This was a 33% increase compared to 2022/23, in which 3 complaints were concluded.

There were 4 complaints outstanding at the end of 2023/24.

The handling of JAC cases within the Office was impacted by the staff shortages and backlogs referenced elsewhere in this report. In each instance, the Office offered apologies to the complainant involved during the process.

In 3 cases, the JAC Chairman responded to draft reports in less than 3 weeks. In the remaining case, the response was received 12 days after the 8-week target. In 4 cases, the Lord Chancellor responded in under 3 weeks.

No cases were upheld or partially upheld.

Given that the number of applicants that the JAC considered for appointment was 6964 over 35 selection exercises with 867 recommendations for appointment, it is notable that the number of complaints to the JACO was so small.

Issues that the JACO considered which did not result in a finding of maladministration can be found in Annex B: Themes.

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

Complainants and stakeholders

Relationship with stakeholders

The JACO and the Office have continued to have good professional working relationships with stakeholders, including the Investigating 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 fall within his remit. He also seeks to ensure that Investigating 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 Office and the MoJ requires the JACO to submit a report to the Lord Chancellor and Lady Chief Justice covering his work for the first six months of each reporting year. The JACO provided this report for the period April to September 2023. It was also sent to the JAC Chairman.

Reasonable Adjustments

In accordance with the JACO's Reasonable Adjustments policy, which was published in March 2022, the 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. This resulted in the Office making a number of reasonable adjustments for complainants in 2023/24, including:

- Allowing complainants to provide details of their complaint orally, with calls being recorded and unedited automated transcriptions provided.
- Providing telephone updates and alerting the complainant in advance of sending written communication.
- Adjusting the formatting and content of its written responses and reports in order to provide accessibility.

There were also instances where the Office declined requests. In doing so, as per its policy, it considered the reasons for the request alongside the office's resources, the impact on the progression of a complaint and the compatibility of the request with the JACO's remit. For example:

- A request for in person meetings. This was declined on the basis it was not a proportionate use of the Office's limited resources and was not necessary for the progression of the complaint as the complainants were able to outline their concerns in writing.

Service complaints received

In 2023/24, this Office addressed 6 complaints about the service provided which were not upheld. These included:

- Delays in processing Full Investigations.
- A delay in processing a Preliminary Investigation.
- Unfounded allegations against members of staff and the JACO.

The Office developed and implemented an Unreasonable Behaviour Policy in 2023/24 which was designed to provide a framework for dealing with actions that the Office considers unreasonable, including: abusive or offensive behaviour; unreasonable demands; excessive unhelpful communication; a refusal to cooperate; an unreasonable use of the complaints process; or any other unreasonable behaviour. As a result, the Office may limit or withdraw its service and may, in exceptional circumstances, contact the police.

There was 1 instance in 2023/24 where a complaint was closed following the receipt of correspondence which contained abusive and offensive language.

Compliments received

The JACO and the Office also received compliments from complainants and others during 2023/24. These include correspondence thanking the Office for:

- Their updates, professional responses and continued communication throughout the investigation.
- The accurate summarisation of a complaint.
- Information and guidance which they said had helped them understand how to proceed with a complaint to the JACO.
- The time dedicated to their complaint and explanation of the process.

Corporate Governance

Status of JACO Office

The 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 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, Officials met regularly 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.

Financial resources

The Office remains committed to managing its resources effectively. It has thorough 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 forecast. These controls assisted key business targets to be met within the limitation of the budget agreed with the MoJ.

The Office budget for 2023/24 was £545k; the outturn expenditure was approximately £507k, an underspend of £38k. The Office's outturn expenditure has been less than budgeted for 18 consecutive years. More than 95% of outturn expenditure was in respect of staff costs, including the JACO's contracted remuneration of approximately £46k.

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

The outturn expenditure figure included approximately £12k in respect of legal fees, compared to the £13k budgeted. In addition, the Office was aware that there were some invoices for legal assistance provided by the Government Legal Department during 2023/24, which had not been received by the end of March 2024.

The Office made no ex-gratia payments during 2023/24.

The Office budget for 2024/25 is £534k. 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 Office's expenditure in 2024/25 might exceed that amount.

Staff resources

The JACO holds a public appointment. There were no instances during 2023/24 in which the Lord Chancellor appointed a Temporary Ombudsman to consider a specific case.

The Office has sought assistance from the Government Legal Department where necessary but has not engaged any other consultants or agency workers during 2023/24.

The 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.

At the start of the 2023/24 period the Office comprised of two Band B Joint Heads of Office (1 FTE being the Business Manager and the other 0.8 FTE a Senior Investigating Officer); 4 Band C Investigating Officers and a Band E Administrative Officer. Following a successful business case, the office was subsequently provided with additional funding to facilitate recruitment of an additional Investigating Officer. There was some movement within the team with the Senior Investigating Officer (SIO) moving to a new position in October 2023 and a very experienced Investigating Officer leaving in February 2024. The SIO role has been covered by an Investigating Officer on temporary promotion.

The Office lost, on average, less than 3 days per member of staff to sickness during 2023/24.

The Office made no compensation or exit payments during 2023/24.

Working arrangements

The office is currently based in the MoJ headquarters at 102 Petty France. It encourages flexible and remote working for all staff where this can be done without compromise to the security of information held and the need to provide a “customer facing” service. During 2023/24, JACO staff adopted more structured hybrid working arrangements combining remote and office-based working and in accordance with MoJ’s returning to the office guidance.

MoJ Corporate plans and longer-term expenditure trends

The 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 Office as an independent Arm’s Length Body.

The Office has provided input to MoJ discussions about long term expenditure trends and the Places for Growth strategy and will continue to do so.

Training and development

Staff are trained to carry out their responsibilities and have a high level of complaints investigation experience. All Office staff hold or are working towards obtaining a BTEC Advanced Professional Award in Complaints Handling and Investigations. In 2023/24, the Office staff undertook training in the handling of Freedom of Information requests, Finance and attended a Combatting Public Sector Fraud event.

Information Assurance

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

The Office is its own data controller and is separately registered as such with the Information Commissioner's Office.

As a data controller the Office is responsible for responding to requests for information made to it under the Data Protection Act 2018, the Freedom of Information Act 2000 and associated legislation and guidance. This included correspondence which is not explicitly a request for information but which the Office interpreted as one. The Office considered 12 such requests during 2023/24 – including requests that decisions made be reconsidered. It is committed to disclosing whatever can be done appropriately under the relevant legislation and guidance.

The 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.

There were two instances in which the ICO found that the Office had not responded to requests for information in accordance with the relevant legislation. However, neither instance resulted in further action being required.

Annexes

A: 2023/24 Statistics

| | Total number of complaints & enquiries received | Appointment-related cases received | Conduct-related cases received | Other enquiries received |
|-----------|---|------------------------------------|--------------------------------|--------------------------|
| APRIL | 126 | 1 | 15 | 74 |
| MAY | 159 | 0 | 20 | 93 |
| JUNE | 198 | 2 | 19 | 135 |
| JULY | 270 | 0 | 25 | 185 |
| AUGUST | 246 | 0 | 24 | 147 |
| SEPTEMBER | 304 | 1 | 34 | 168 |
| OCTOBER | 269 | 0 | 29 | 195 |
| NOVEMBER | 318 | 0 | 32 | 237 |
| DECEMBER | 171 | 0 | 17 | 112 |
| JANUARY | 371 | 1 | 20 | 207 |
| FEBRUARY | 344 | 0 | 26 | 234 |
| MARCH | 253 | 1 | 31 | 179 |

| | Total number of complaints & enquiries received | Appointment-related cases received | Conduct-related cases received | Other enquiries received |
|---------------|---|------------------------------------|--------------------------------|---------------------------------|
| | Number of complaints & enquiries | Appointment related cases | Conduct related cases | Other enquiries received |
| TOTALS | 3029 | 6 | 292 | 1966 |

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 |
|-----------------------------|------------------------------------|-------------------------------------|---|
| 292 | 201 | 80 | 11 |

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 | - | 4 | 5 |
| Conduct Investigation (JCIO) | 174 | - | 21 | 195 |
| Conduct Investigation (Tribunal) | 72 | 1 | 8 | 81 |
| Conduct Investigation (Tribunal and JCIO) | - | - | - | - |
| Conduct Investigation (Advisory Committee) | 9 | - | 3 | 12 |
| Conduct Investigation (Advisory Committee and JCIO) | - | - | 3 | 3 |
| Total | 256 | 1 | 39 | 296 |

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

| | Not Upheld | Upheld and Partially Upheld | Total |
|---|------------|-----------------------------|-----------|
| Appointment | 4 | - | 4 |
| Conduct Investigation (JCIO) | 13 | 8 | 21 |
| Conduct Investigation (Tribunal) | 6 | 2 | 8 |
| Conduct Investigation (Tribunal and JCIO) | - | - | 0 |
| Conduct Investigation (Advisory Committee) | 3 | - | 3 |
| Conduct Investigation (Advisory Committee and JCIO) | - | - | 3 |
| Total | 29 | 10 | 39 |

B: Themes

JAC

The JACO remit focuses on whether a person has “been adversely affected, as an applicant for selection or as a person selected, by the maladministration complained of”. During the reporting period, the JACO considered complaints on the following themes.

The Selection Process

The JACO can consider whether the JAC ran a Selection Exercise in accordance with the published criteria and that the panel and the Selection and Character Committee had all the relevant material to assess a candidate’s suitability for appointment. He cannot review the merits of the decisions made. Complaints considered by the JACO included concerns about:

- The decision not to progress a person to a Selection Day based on their score in an online test where technical issues were reported.
- Whether the questions in a Situational Judgment Test disadvantaged candidates who do not regularly appear in court and amounted to maladministration because it was a breach of the JAC’s obligations under the public sector equality duty and the Equality Act 2010.
- Whether the Selection Panel was provided with the correct material for a candidate at a Selection Day.
- Whether the JAC followed the process for identifying and handling potential conflicts of interest.

The JACO was satisfied that:

- Although some candidates were unable to access the online test when it opened, the JAC had no reason to doubt the robustness of its IT system prior to being notified by those affected. It then took appropriate steps to rectify the technical issues as soon as it was made aware of them, and the person was able to access and complete the test. The JAC moderated those candidates who reported technical issues but, in this person's case, it was content that the margin between their score, and those who progressed to the next stage, reflected that they were not disadvantaged by the issues to a degree that would change the overall result. The JACO cannot determine whether the decision not to progress an application was correct, but he was content that the JAC took reasonable steps to ensure the candidates affected were not disadvantaged as a result of the technical issues.
- Whilst he could not comment on whether the JAC met its obligations under the Equality Act 2010, he could consider whether, in broad terms, the content of the situational judgment test and handling of a complaint about it demonstrated a disregard to the legislation to an extent that would warrant a finding of maladministration. He was content that it did not, on the basis that the JAC was alive to questions of fairness in the Situational Judgement Test and took appropriate steps to design, review and dry run a test that aimed not to unfairly disadvantage those from different professional backgrounds.
- The JAC took appropriate steps to ensure the Selection Panel received the complete and correct information for candidates. In 'name blind' Selection Exercises, each candidate has a reference number for identification and information is cross referenced before being added to a candidate's specific folder. Where a 'name blind' sift is not in place, such as when sifting is by way of online tests, the panel would receive a pack containing the required information without being anonymised.

- The JAC has a process in place for dealing with potential conflicts of interest. It asks the panel to declare any conflicts of interest so that the panels can be adjusted. Candidates are given the same opportunity. Where a conflict is declared, the JAC would consider whether to move the panel member and would move panels where there was a clear conflict. The JACO was content that the process had been followed in the complaint he considered on this matter and no conflict of interest had been identified by the panel or the candidate.

Feedback and feedback reports

The provision of feedback continues to be a common theme in complaints to the JACO as unsuccessful candidates are keen to know why they were not recommended for appointment. The level of feedback the JAC provides is published for each Selection Exercise and can take the form of individual written feedback; and a generalised report published on its website at the sift stage, online test stage, or following the Selection Day.

The JACO considered complaints about:

- Whether it is reasonable for the JAC not to provide individual feedback to all candidates.
- Whether a higher score was merited in a Scenario Test because the answers given closely matched the information in the feedback report.

The JACO was content that the JAC had followed the published process and that:

- The provision of feedback is not a statutory requirement. The aim of written feedback is to steer people towards areas for improvement and not to provide a detailed justification of why someone was not appointed.
- It must use its resources appropriately. Providing written feedback for all candidates attending a selection day can be resource intensive. Therefore, it is reasonable not to provide individual feedback to all unsuccessful candidates in selection exercises that attract large numbers of applicants.

- Feedback reports contain information about effective / less effective answers to questions in the Scenario Test. It is not reflective of a detailed marking schedule, but a collection of themes based on observations across the whole Selection Exercise. The JAC re-uses role plays in future Selection Exercises and it is reasonable not to include detailed information in the feedback report to prevent it becoming a coaching guide.

Moderation

The JACO considered whether the JAC followed an appropriate moderation process to ensure consistency in a Selection Exercise.

The JACO was satisfied that the JAC has a range of practices to ensure fairness and consistency that were applied in the Selection Exercise, including:

- Reviewing a sample of applications after the sift stage.
- Briefing the panel members on the marking process; observing 'dry-runs' to become familiar with the assessment process and expectations; calibration to assess the grades awarded by other panels; and reviewing and comparing the marking between panels.
- Conducting an overall moderation exercise to review the marking of all panels to identify discrepancies in the standards applied or the marking given, including a selection of candidates across all the marks and those candidates who fall 10% above or below the cut off line.

JCIO

The JACO's remit covers investigations conducted by the JCIO. The JCIO can investigate fee paid and salaried judges and coroners, with Tribunal judges falling into their remit following commencement of the Judicial Conduct (Prescribed Procedures) Regulations 2023 and the implementation of the Judicial Conduct Rules 2023 on 13 October 2023.

Complainants and judicial office holders who have been through the disciplinary process can complain to the JACO about the handling of a complaint.

For complaints that have required a full investigation this year, there have been the following themes.

Delay

Issues of delay formed the basis of many of the complaints concluded in 2023/24. This was largely due to the impact of staff shortages in the JCIO, coupled with an increased workload. The JACO has considered complaints about delay which included:

- Delay in a complaint that was already under consideration when the impact of staff shortages first occurred. This led to periods where the complaint was allowed to drift. The JACO took the view that the delays alone might not amount to maladministration, given the circumstances, but found the JCIO did not send the complainant regular updates and did not inform them that the complaint was impacted by staff shortages and pressures of work. On balance, the Ombudsman found maladministration and the JCIO agreed to apologise to the complainant.

- The reasonableness of delaying the allocation of a complaint due to the pressure of work. The JACO was sympathetic to the JCIO's position but took the view that it should manage the complainants' expectations. Therefore, he recommended that the JCIO should write to the complainant at the outset to explain that, whilst cases remained unallocated, no progress would be made, and no monthly updates would be sent.
- Whether the delay in addressing a complaint led to its dismissal without investigation because the judge retired before it was assessed, and therefore was no longer subject to the judicial conduct arrangements. The JACO carefully weighed up the evidence but was satisfied that, even if the JCIO had been able to assess the complaint immediately, there was still insufficient time to investigate the complaint before the judge retired. On that basis, the JACO did not find maladministration. However, to prevent a reoccurrence in cases where a complaint cannot be allocated to a caseworker, the JACO recommended that the JCIO carries out an initial check on receipt of a complaint to clarify the status of the judicial office holder concerned. In this instance, the JACO would have recommended that the JCIO apologise to the complainant for the distress caused by its handling of the complaint, but it had already done so.

Communication

The JACO considered complaints about:

- The clarity of the JCIO's correspondence to complainants, including where a dismissal letter containing a summary of the complaint invited the complainant to say if that summary was incorrect or incomplete, whilst warning that it would not respond to any correspondence that did not raise any new information that warranted a reconsideration of the decision. When the complainant directly responded to say why the summary of the complaint was incorrect and provided supporting documentation, the JCIO did not respond because it did not consider it to be new information. However, the complainant did not know

this which led to the complaint to the JACO. The JCIO confirmed that it had assessed the information and did not consider it necessary to take any further action. The JACO cannot review the merits of a decision and he did not find maladministration because he was satisfied the JCIO had followed a reasonable process in line with legislation and guidance.

Process issues

The JACO considered complaints about:

- The reasonableness of not seeking further particularisation where the phrasing of a complaint in connection with a lengthy hearing was unclear on whether there were any additional behaviours beyond those the JCIO had already summarised. The JACO did not find maladministration as he was content that: the JCIO's website is sufficiently clear that the onus is on the complainant to set out the specific details of their concerns and it cannot accept generalised complaints; the complainant did not provide any further clarification of the complaint when asked if the JCIO's summary was correct or incomplete; the JCIO had listened to a proportionate amount of the hearing and found no evidence to support the general allegations; and the JCIO had dismissed the complainant's broad area of concern in connection with an allegation that the judge had prevented the barrister from asking questions and providing background material as judicial decision making and judicial case management that did not raise a question of misconduct.

- Whether the JCIO had overlooked the complainant's complaint on issues of racism and undermining behaviour. The JCIO had previously dismissed the complainant's concerns as being about judicial decision making and judicial case management, that did not raise a question of misconduct. The JACO was concerned that the JCIO failed to follow a proper process given that its website states that it can consider the use of racist, sexist, or offensive language and it had not considered: the respective races of the judge and the complainant; the nature of the words used or the complainant's stated view on their impact upon them. The JACO found the JCIO's failure to take relevant information into account and decision to dismiss the complaint without making further enquiries amounted to maladministration. He would have set the decision aside using his powers under Section 111(5) to (7) of the Constitutional Reform Act 2005, but the JCIO agreed that it had prematurely dismissed the case and that it would reconsider it.

Tribunals

In 2023/24, the Tribunal Presidents, or delegated Tribunal members, were responsible for conduct complaints under the Judicial Conduct (Tribunals) Rules 2014 until the implementation of the Judicial Conduct Rules 2023 on 13 October 2023.

For complaints that have required a full investigation this year, there have been the following themes.

Delay

The JACO considered cases about the delay in concluding complaints, including:

- A complainant who made numerous complaints about four judges to a Tribunal President (the President) between November 2020 and September 2022. During that period, the President was overwhelmed with other Tribunal related work and, whilst he was aware of the complaints and correspondence from the complainant, he did not have any capacity to deal with it at that time. The complainant complained to JACO in September 2022, before the conclusion of the complaints to the President, and the Office intervened on their behalf. The President concluded all the complaints in September 2022 and sent the complainant a detailed letter including: an unreserved apology for the delay; an explanation for the “unprecedented pressures” faced by the Tribunal; and the impact on his ability to respond to conduct complaints in a timely manner. The JACO was sympathetic to the pressures of work faced by the President, but the JACO had to assess the matter from the complainant’s perspective. On that basis, the JACO found maladministration because:

- The lack of a substantive response to the earliest complaint meant there was no direction on what could be investigated under the Rules. This meant that the complainant subsequently raised matters that could not be considered under the conduct Rules. Therefore, the President was left with the arduous task of examining all the matters raised between November 2020 and September 2022.
- Any further investigation would be hindered by the significant passage of time.
- He could not rule out the possibility that, without his office's intervention, matters would have been left to drift further.

The JACO did not make a recommendation for redress because the President had already apologised to the complainant.

Process

The JACO considered complaints about:

- Whether it was reasonable to dismiss a complaint made outside the three-month time limit without asking the complainant for the reasons for the delay to determine whether there are grounds to extend the time limit. In this instance, as soon as the Office brought this to the attention of the Regional Tribunal Judge, the omission was acknowledged, and the complaint re-opened. On request, the complainant provided their reasons for the delay which were that: they waited until the proceedings concluded before making the complaint; and so, although the hearing where the alleged misconduct occurred was more than three months ago, the case had concluded within the time limits. In considering that explanation, the Regional Tribunal Judge took the view they were not exceptional reasons and the complainant had not been prevented from complaining sooner. The Regional Tribunal Judge provided a reasoned explanation for rejecting the complaint for being out of time in line with the requirements of the 2014 Rules.

The JACO did not find maladministration because: it was an unfortunate oversight; it was rectified as soon as it was brought to the Regional Tribunal Judge's attention; and an appropriate process that was consistent with legislation and guidance was subsequently followed.

- Whether it was appropriate to assess allegations of misconduct on the balance of probabilities where the complainant believed the process followed was biased and lacked substantive evidence. The JACO considered an appropriate process was followed because the Regional Tribunal Judge: obtained comments from the judge and Tribunal member concerned which were broadly similar to the complainant's albeit from a different viewpoint; considered the proportionality of making further enquiries, including from third parties present at the hearing; and took steps to obtain the audio recording of the hearing which, for administrative reasons, did not exist. The JACO took the view that it was reasonable for the Regional Tribunal Judge to determine the complaint on the balance of probabilities and did not find maladministration.

Advisory Committees

The JACO remit includes the handling of complaints against Magistrates.

In the 2023/24 reporting period, the Chairman of the relevant Advisory Committee was responsible for conduct complaints against Magistrates under the Judicial Conduct (Magistrates) Rules 2014.

From 13 October 2023, the relevant Conduct Advisory Committee became responsible for conduct complaints against Magistrates under the Judicial Conduct (Magistrates) Rules 2024.

For complaints that have required a full investigation this year, there have been the following themes.

Delay

The JACO appreciates that the disciplinary process can be lengthy and there is no overall time limit for conclusion, although it is incumbent that matters should be addressed swiftly for the benefit of those under investigation and those who might be affected by the outcome. In line with this, the JCIO, for example, advises complainants that it aims to conclude “complaints accepted for further assessment, including complaints that proceed to full investigation, within 20 weeks of receipt”, but also indicates that “Complex cases may take longer to complete”.

The JACO considered a complaint about:

- Whether the delay in concluding a complaint amounted to maladministration. The JACO noted that the time taken was not ideal, but did not make a finding of maladministration because: there were no periods where the complaint was allowed to drift or any single party or issue that could be blamed for the time taken; and it was instead a series of contributory factors that were reasonably handled, including the various stages in the process that required a timescale

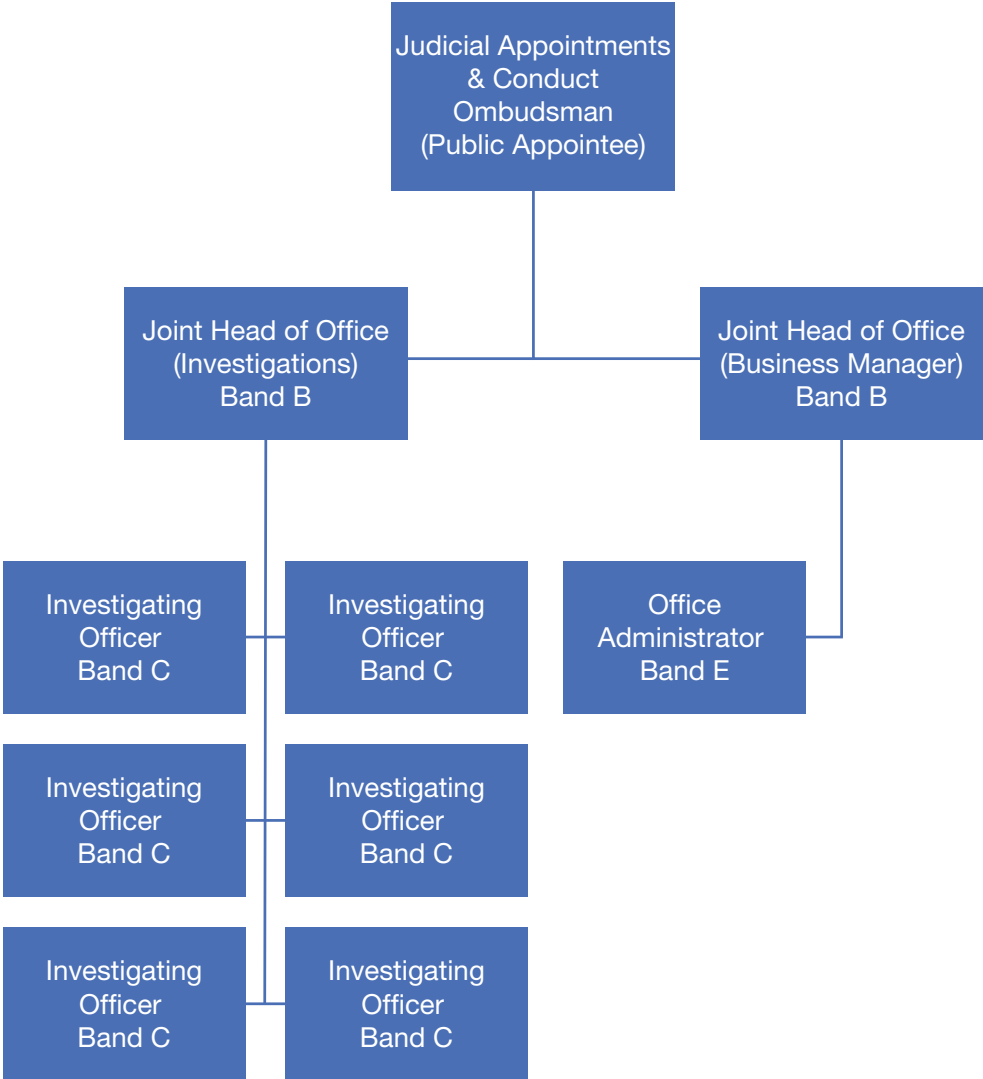
specified by the Rules; the availability of parties, including the Conduct Panel; and the need to address enquiries about the evidence being considered.

Process

The JACO has considered complaints about:

- The proportionality of the Conduct Advisory Committee relying on a Legal Advisor's account of events to determine a complaint. The JACO took the view that the complainant may have had more confidence that a thorough and independent investigation occurred if the Conduct Advisory Committee had approached third parties or listened to the audio recording of the hearing. However, the Rules provide for Advisory Committees to make enquiries as they consider appropriate and that the consideration of independent evidence must be proportionate. In this instance, the JACO did not find maladministration because:
 - He found the Conduct Advisory Committee's approach was consistent with the process and the Legal Advisor is an independent legally qualified role who can provide impartial view and has a duty to report any inappropriate behaviour.
 - The Conduct Advisory Committee confirmed it had decided there was sufficient information to determine the complaint based on the Legal Advisor's response to the complaint.

C: JACO Office structure (March 2024)



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 (90%) |
| PT 3 – When a preliminary investigation is required to establish if the potential complaint is within the JACO's remit, we will conclude this evaluation and provide a full reply within 30 working days/6 weeks, in 90% of cases. | Achieved (98%) |
| PT 4 – When a case is ready for investigation we will aim to keep all complainants fully informed on a monthly basis in 98% of cases. | Achieved (99%) |
| PT 5 – We will publish our performance against these indicators in our Annual Report and on our website. | Achieved |

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

- To keep our working practices under review, **Achieved** 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.
- To ensure that our staff maintain a high level of skill in Complaints Handling and Investigations.

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

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

E: Budget and Actual Expenditure

| | BUDGET | ACTUAL |
|--|----------------|----------------|
| Staff costs and salaries | 511,000 | 492,000 |
| Office expenditure, Accommodation, Training, IT Services, Service costs and Miscellaneous | 19,000 | 2,000 |
| Legal costs | 15,000 | 13,000 |
| Total expenditure | 545,000 | 507,000 |

F: Statistical Data (Full Investigations) 2018/19–2023/24

| Financial year | 2018/19 | 2019/20 | 2020/21 | 2021/22 | 2022/23 | 2023/24 |
|--|---|---|---|---|---|---|
| Cases determined after Full Investigation | 88 | 84 | 76 | 66 | 50 | 39 |
| Conduct (JCIO, Tribunal, Advisory Committee) | 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 | 14 upheld/ partially upheld 36 not upheld | 10 upheld/ partially upheld 25 not upheld |
| Appointment | 9 not upheld | 1 upheld/ partially upheld 2 not upheld | 1 upheld/ partially upheld 7 not upheld | 5 not upheld | 3 not upheld | 4 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) | 10 (9 FTE) | 7 (7 FTE) |
| Budget¹¹ | 423,000 | 445,000 | 454,000 | 454,000 | 512,000 | 545,000 |
| Actual spend | 409,000 | 434,000 | 447,000 | 441,000 | 442,000 | 507,000 |

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

