

Judicial Appointments &  
Conduct Ombudsman

**Annual Report 2011-12**

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

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## The Ombudsman's Statutory Remit

The Judicial Appointments and Conduct Ombudsman is a Corporation Sole. He acts independently of Government, the Ministry of Justice (MoJ) and the Judiciary. The Constitutional Reform Act 2005 empowers him to consider:

### **Judicial Appointments**

- complaints from candidates for judicial office who claim to have been adversely affected by maladministration in the way in which their application for appointment, and/or subsequent complaint to the Judicial Appointments Commission (JAC), was handled; and

### **Judicial Conduct and Discipline**

- concerns raised by a complainant, or a judicial office holder who has been the subject of a complaint, about how the complaint was handled under the regulated disciplinary function, by the Office for Judicial Complaints (OJC), a Tribunal President or a Magistrates' Advisory Committee.

### **In judicial appointment complaints, the Ombudsman can:**

- uphold or dismiss a complaint (in whole or in part); and
- make recommendations for redress (including a recommendation for payment of compensation for loss suffered as a result of maladministration).

### **In judicial conduct and discipline complaints, the Ombudsman can:**

- review how a complaint against a judicial office holder has been handled, to ascertain whether there was a failure to follow prescribed procedures or some other maladministration; and
- make recommendations for redress. In cases where he has concluded that maladministration led to the original decision being unreliable, he can set aside that decision and direct that a new investigation or review be undertaken (in whole or in part). He can recommend payment of compensation for loss suffered as a result of maladministration.

## Overview

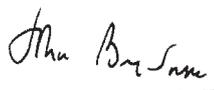
This is my sixth Annual Report. My aim is to ensure that the processes for applying for judicial appointment, and for dealing with complaints about judicial misconduct, are followed correctly. Where I find maladministration, I look for rectification and redress. I also act as an essential catalyst for the improvement of complaint handling by first tier organisations, with a view to reducing the number of cases that reach me. I owe an equal “duty of care” to both complainants and those complained about.

In 2011/12, I received 647 complaints against 470 in 2010/11 (a 38% increase). Over the last six years there has been a 437% increase over a steady state 120 cases per year, forecast by the then Department for Constitutional Affairs, when my post was established. Last year, just seven cases concerned the handling of applications for judicial appointment, a credit to the JAC’s complaint handling; 466 concerned the personal conduct of judicial office holders; and 174 fell outside my remit. I attribute these increases to a greater awareness of my role as a formal, thorough and fair means of providing final resolution in the complaints process, at no cost to the complainant.

My team have coped with this unanticipated “demand led” increase with efficiency and innovation, and against budget reductions which, six years on, leaves us with a lower budget now than at our inception in 2006. My own hours, reduced by 28% in 2010, are currently under Job Evaluation review in light of my position as a Corporation Sole, with direct personal responsibility (under the Constitutional Reform Act) for every “finding”.

Overall, I am encouraged by recent improvements in all the first tier processes, but there remain a few “common failings”, easily rectifiable, which I have repeatedly identified in my Annual Reports. I can only make suggestions as to how things could be improved; I have no authority to implement remedial measures. In that context, I welcomed the opportunity to contribute to the ongoing, and very thorough, analysis by the Working Group reviewing the Rules and Regulations Governing Judicial Discipline, commissioned by the Lord Chancellor and the Lord Chief Justice.

Finally, I would like to thank my team for their excellent work in what has been our most demanding year to date. They go out of their way to help everyone who contacts them, regardless of whether their concerns relate to my office. I am very grateful to them for their dedication and hard work. I would also like to thank Karamjit Singh CBE for acting as Temporary Ombudsman in two cases, and Jane Irvine in another, when I had to stand aside due to potential conflicts of interest.



**Sir John Brigstocke KCB**

# Performance

## Targets

The JACO office has achieved all the targets set out in the 2011/12 Business Plan (see Annex C).

All correspondence and complaints are checked to assess whether they fall within remit. Dealing with this increased volume of cases and enquiries (647 compared to 470 in 2010/11 – the highest annual year-on-year increase (38%) since the JACO role was established) has been a challenge; however, we remain committed to providing a high level of customer service. The vast majority of complaints continue to concern judicial conduct; 466 compared to 418 last year, an increase of 48 cases (11%).

After consideration by a caseworker, 174 cases, a significant increase on last year, were found to fall outside the Ombudsman's remit as they did not concern matters relating to appointments or conduct. Where appropriate, complainants were referred to another organisation which could assist them. In a further 239 cases, which did relate to appointment or conduct issues, either no complaint had been made to the first tier organisation or the complaint had not been adequately particularised. All complainants were given a full written explanation detailing the reasons why the Ombudsman could not investigate their concerns.

Complaints that require a more detailed initial evaluation of validity are fast-tracked to determine whether or not the complaint requires a full investigation. JACO staff considered 192 cases in this category, liaising closely with complainants to see whether they could be more specific in their concerns, obtaining the complaint file from the first tier organisation and considering whether there was a possibility that maladministration within the process had occurred. Based on these assessments, a full investigation was deemed to be unnecessary in a further 128 cases, compared to 122 last year. The Ombudsman wrote to these complainants, most of whom accepted the explanation, and the matters were concluded without a full investigation being necessary.

In 66 of the 647 cases received (10%), a **full investigation** was required. These were thoroughly looked into, involving liaison with the complainant and the first tier organisation, and the review of a high volume of documentation. This process of formal investigation can often take a long time in order to ensure a fair, thorough and balanced investigation; many of the issues are complex and sensitive. Overall, 73 cases were determined this year (including nine carried forward from 2010/11). There has been a noticeable increase in the complexity of the cases and considerable thought has been given to the many new and novel points that have been raised, including a number of occasions when the Ombudsman's remit was challenged, and he needed to seek legal advice. JACO staff keep complainants

regularly informed of progress throughout the investigation, particularly when pressures of work in this office, or where legal advice is required, have meant that investigations have not been concluded as quickly as we would have liked.

The Ombudsman continues to receive a number of post-complaint letters, but so far none of the issues raised has caused him to review his original finding. There have been some instances where minor errors have been identified in Investigating Officer Reports; however, they have had no bearing on the overall outcome of the investigation. Such correspondence is carefully considered and the original investigation is thoroughly reviewed to address the concerns raised. In the six and a half years since the post was established the Ombudsman has not been judicially reviewed.

### **Overall outcome**

The approach taken in second tier complaint handling continues to achieve encouraging results enabling resources to be concentrated on those cases that do fall within remit, and which may indicate some failings or concerns about the process at the first tier. Cases dealt with under the fast track procedures accounted for around 80% and were dealt with within 6 weeks of receipt. Cases requiring a full investigation can often take considerably longer.

## Emerging themes and issues arising from investigations

### Appointments

The Judicial Appointments Commission

There were seven complaints in 2011/12, compared to six last year, and the JAC investigation processes are generally very good. Issues requiring investigation included:

- consideration of “reasonable adjustments” for applicants for selection;
- the process by which the JAC’s Selection and Character Committee (SCC) decides which candidates to select, and how it identifies candidates for particular vacancies; and
- the need to ensure a clear audit trail of decisions made.

### Conduct

The Office for Judicial Complaints

276 complaints were received during 2011/12, compared to 282 last year.

Reasons for making a complaint included:

- concerns about administrative processes, for example: unnecessary delay; poor record keeping and case management; not keeping complainants informed of the progress of their complaint; failing to make enough enquiries or to give complainants an opportunity to provide further information;
- alleged failure to note that a new conduct complaint was being made amongst numerous other issues, or confusion when reading detailed correspondence leading to a misunderstanding;
- conflict of interest or allegations of judicial bias;
- the OJC’s authority to reopen investigations when new evidence comes to light; and
- insufficient care with dismissal and other letters to ensure that the investigation process is clearly explained and that letters are appropriate and unambiguous.

The Ombudsman has noted an improvement in the OJC’s case management and review of older and more complex cases. Complainants are also being kept better informed about progress in the investigation of their complaint. The OJC is also taking a much more pro-active approach in ensuring that recommendations or criticisms are picked up and that the appropriate action is taken.

### Tribunal Presidents<sup>1</sup>

145 complaints were received during 2011/12, compared to 104 last year.

This included a number of enquiries from complainants who had unrealistic

<sup>1</sup> or a judicial office holder designated by the President under rule 4 (1) of ‘The Judicial Complaints (Tribunals) (No.2) Rules 2008’.

expectations about what the regulated disciplinary provisions could consider; most concerns were about judicial decisions or judicial case management and thus fell outside the Ombudsman's remit.

Reasons for making complaints included:

- the time taken to handle complaints;
- the adequacy of correspondence when rejecting complaints, including the failure to explain clearly the role, remit and process for investigations; the inaccuracy of decision letters to complainants; and
- the interpretation of what is a "continuing state of affairs". If the judicial conduct complained about is not subject to further litigation, then there may not be a continuing state of affairs; if the complainant is taking the appeal route it is unlikely to involve the judicial office holder complained about. This is something that investigating judicial office holders consider carefully on a case by case basis.

#### Magistrates' Advisory Committees

45 complaints were received during 2011/12, compared to 32 last year. Some confusion still exists between conduct and pastoral matters, including the scope to investigate matters usually considered under the arrangements for dealing with pastoral matters, where attempts to resolve issues on that basis have been unsuccessful, and may need to revert to the conduct route. There were some instances of inconsistency in applying the rules regarding whether a case is referred to a Conduct Investigation Panel and whether the decision is made by the Advisory Committee or by officials.

Complaints included:

- failing to make adequate enquiries including independent verification;
- not giving Magistrates enough information about the allegations made against them to enable them to respond;
- inadequacies in the Advisory Committee decision letters, which led complainants to believe that their complaints had not been fully considered;
- delay in handling complaints; and
- conduct panels not dealing with all the issues raised by the complainant, or not being clear enough in advance on the exact nature of which points the panel would be addressing at the meeting.

The number of complaints in this area is small, but there continues to be a lack of consistency in approach. A single point of contact within MoJ has now been identified to ensure that recommendations and criticisms are followed up across all Advisory Committees.

**Typical Case Studies are at Annex B**

# Complainants and Stakeholders

## Our communications

Use of the website [www.judicialombudsman.gov.uk](http://www.judicialombudsman.gov.uk) is encouraged as a means for people to find out about the Ombudsman's role and to access the on-line complaint form.

## Working with Stakeholders

Constructive relationships have been built on, and maintained, with all our stakeholders, including the Lord Chancellor, the Lord Chief Justice and the MoJ. During the course of the year meetings were held with senior officials within the MoJ, the Head of the OJC and the Chairman of the JAC. The Ombudsman continues to be an Associate Member of the Ombudsman Association (formerly the British and Irish Ombudsman Association). JACO officials met with Moi Ali, Judicial Reviewer for Scotland, to talk to her about how the office is organised.

Useful meetings were held with judicial members of the Employment Tribunal and the Social Entitlement Chamber to discuss issues arising from some of the investigations. The Ombudsman also attended the Health Education and Social Care Chamber Annual Conference to speak about best practice in complaint handling. Members of the JACO office have also observed Tribunal hearings.

## Complaints against the JACO Office

Feedback about how the Ombudsman and the JACO team are performing is welcome. Four complaints were received this year, all concerning the administrative service provided by the office:

- Two complainants were unhappy with the time it had taken to investigate their complaint once it had been accepted for investigation. We apologised for this, and explained that it was caused by a backlog of investigations; the cases were subsequently completed as quickly as possible.
- A number of complaints were received from the same complainant including allegations that members of JACO staff were biased, had a conflict of interest, had links to freemasonry and were part of a wider conspiracy. However, following a thorough investigation of the issues raised, no evidence was found of inappropriate behaviour by any member of staff.
- A complainant was concerned that the Investigating Officer did not deal with his complaint fairly and was biased in favour of the Judicial Officer holder. It was explained that the Ombudsman alone determines the outcome of a complaint and that he makes the final decision, having evaluated a number of sources of evidence, one of which is the Investigating Officer's report.

## Compliments received

Below are extracts from some of the letters we have received this year:

- *“...Although your organisation was unfortunately unable to assist me with my complaint, I very much appreciate the time and trouble you took to try to identify some way forward for me. It meant that I was not left feeling ignored, not taken seriously or ‘fobbed off’ by your organisation. I think your organisation is providing a terrific and important public service, helping to ensure that judicial conduct problems are dealt with fairly and rationally, and as a result of that, helping to improve the public’s perception of the legal system.”*
- *“Thank you for your considered response. I appreciate the Ombudsman’s Office is different [from the Tribunal] and am hopeful that things will run smoothly and that my ‘voice’ will be heard.”*
- *“[Mr and Mrs X] wish to express our gratitude for what must have been a time consuming process [investigation] for you both [Investigating Officer and Ombudsman] and can only apologise for this... We both wept on reading your report and have been battling for justice to no avail, we fully understand your remit but wish to say that, though it may take us no further in that quest, it has made us feel that someone has listened and that was all we asked. Once again thank you both for your kind attention.”*
- *“I am delighted that you have upheld my complaint and this gives me lots of confidence in the role of the Ombudsman to correct problems with the behaviour of judges that otherwise would be dismissed or covered up... Please pass my thanks onto the Ombudsman for his neutrality; he has helped restore my faith in the judicial system.”*

# Corporate Governance

## **Resources**

### Financial resources

We are committed to managing our resources effectively and have in place sound and appropriate financial and governance arrangements which enable our key business targets and achievements to be met.

### Staff resources

Our staffing level has not changed despite a very significant increase in cases; we continue to have an office of 10 staff (9.4 full-time equivalent), plus the Ombudsman (0.5 full-time equivalent). We have covered maternity leave and other staff losses as a result of the wider MoJ Voluntary Early Departure Scheme. The office has a very low level of sick absence, an overall average of three days, well below the MoJ target of 7.5 days per person. All sick absence is managed in accordance with the MoJ's sickness absence policies.

### Training and development

Continuing financial constraints have made us look at more innovative ways of training our staff to ensure our capability to develop and deliver our business. JACO staff are trained to carry out their respective duties, with a high level of complaints investigation experience between them.

### Information Assurance

A key priority continues to be the protection of the information that we hold about complainants and those complained about; the team are fully aware of, and responsible for, the safeguarding of this information.

## **Other statutory and departmental requirements**

In accordance with our Memorandum of Understanding with the Ministry of Justice, we have local procedures in place to ensure compliance with Health and Safety legislation, staff security, IT security and Information Assurance, as well as our own local financial and risk management systems. In addition, we ensure compliance with the Freedom of Information Act 2005 and the Data Protection Act 1998. FOIA and DPA aspects continue to cause an increasing amount of work. In a small office, the analysis of all documents to determine disclosure can be time consuming; it has, on occasions, delayed the progress of an investigation. However, we remain committed to disclosing whatever we can, in line with legislation.

# Annexes

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## Annex A

### 2011/2012 Statistics

#### Breakdown of complaints received

	Total number of cases received	Appointment-related cases received	Conduct-related cases received	Other enquiries received
April	53	1	40	12
May	46	–	30	16
June	36	–	28	8
July	53	1	43	9
August	59	1	48	10
September	57	–	42	15
October	58	–	33	25
November	68	1	49	18
December	57	1	40	16
January	44	–	37	7
February	52	–	36	16
March	64	2	40	22
	<b>Number of complaints</b>	<b>Appointment related cases</b>	<b>Conduct related cases</b>	<b>Other enquiries received</b>
<b>TOTALS</b>	<b>647</b>	<b>7</b>	<b>466</b>	<b>174</b>

#### Breakdown of conduct complaint received by first tier organisation

Total Conduct related cases	Conduct cases relating to the OJC	Conduct cases relating to Tribunals	Conduct cases relating to Advisory Committees
466	276	145	45

**Breakdown of cases finalised<sup>2</sup>**

	Cases dealt with at 1st level – ‘initial check’	Cases finalised at 2nd level – ‘fast track’	Cases finalised following a 3rd level ‘full investigation’
Appointment	3	0	5
Conduct – relating to OJC	110	91	41
Conduct – relating to Tribunals	95	30	20
Conduct – relating to Advisory Committees	31	7	7
<b>Total</b>	<b>239</b>	<b>128</b>	<b>73</b>

**Cases investigated, determined and finalised<sup>3</sup>**

	Not upheld	Upheld and partially upheld	Total
Appointment	5 (100%)	0 (0%)	5
Conduct – relating to OJC	32 (74%)	9 (26%)	41
Conduct – relating to Tribunals	17 (85%)	3 (15%)	20
Conduct – relating to Advisory Committees	5 (71%)	2 (29%)	7

- <sup>2</sup> The number of cases received will not correlate with the number of cases finalised because cases will have been received in the previous year and finalised this year, and similarly ongoing cases as at 31/3/11 have been carried into the next year, and will be finalised in the next year.
- <sup>3</sup> The statistics have been broken down by each of the first tier organisations to provide a more valid and accurate summary. It is accepted that the OJC may have had varying degrees of involvement in conduct complaints in relation to Advisory Committees.

## Annex B

# Case Studies

The purpose of these Case Studies is to provide a brief summary of the type of complaints that are made to the Ombudsman. These are extracts from finalised investigations, but they highlight only the point of interest, and are not reflective of all matters complained about. To ensure anonymity, 'he' has been used throughout the case studies, in lieu of he/she.

## Appointment case studies

### Case study one – Judicial Appointments Commission

An applicant was rejected after attending a selection day where he had been interviewed and participated in a role play exercise. The Selection Panel felt that the applicant had performed well at interview, and had favourable evidence from referees and in his application form, but that he had performed poorly in the role play exercise. The Selection Panel (one of a number involved in this selection exercise) concluded that he was “selectable” and placed him in Band C. This panel had indicated he was a “C+”, suggesting that he was one of the stronger Band C candidates, notwithstanding the JAC’s observations that there was no Band C+. The JAC did not seek statutory consultation comments and he was not recommended for appointment.

His complaint to me was that he had been rejected unfairly and that his role play had been assessed inaccurately. Some of the candidates whose applications were the subject of statutory consultation, and were subsequently selected for appointment, were placed in Band C. However, it was the moderation meeting which decided which candidates should be subject to statutory consultation having considered the findings of all the selection panels.

I saw no evidence that the decision not to select him was influenced by maladministration or was inconsistent with selection on merit. It is not unexpected that decisions as to which candidates at the margins should be selected might be finely balanced. The evidence I saw indicated that the difference between the assessed performance of this applicant, and the Band C candidates whose applications were subject to statutory consultation and recommended for appointment, was slight. However, all the Band C candidates whose applications were taken forward had, overall, been awarded a better range of marks against the Qualities and Abilities than the complainant.

It was clear from my investigation that his performance in the role play was the weakest part of his application. Both the JAC Complaints Manager and my Investigating Officer listened to a recording of the applicant’s role play. In addition, role plays of two other candidates were listened to; both scored higher than the complainant, one significantly so, and both had been assessed by the same selection panel. My Investigating Officer formed the view that both of these candidates performed more effectively in the role play, appeared to be more “in control” of the court and generally performed with greater assurance than the complainant.

I did not uphold this complaint, and did not identify any maladministration. I did recommend that the JAC should ensure that Selection Panels are clear about the marks, including subdivisions of marks, that are available when assessing candidates, and should ensure that no additional categories are used. I was pleased that the JAC implemented this immediately.

### **Case study two – Judicial Appointments Commission**

I determined two complaints where the JAC considered requests for “reasonable adjustments” to be made, from applicants for selection who had passed the qualifying test and were invited to the selection day. In Case A the applicant was notified of a family bereavement prior to the start of the selection day and contacted the JAC Reasonable Adjustments Team. He was offered two alternative dates within the same week, but requested a date the following week, or at another location. When this offer was not forthcoming, he decided to continue with the original selection day. The complaint to me was that the JAC did not accommodate his special needs or reasonable adjustments, that he had suffered a temporary disability as a result of the family bereavement, and that this was covered by the Equality Act 2010. My powers under the Constitutional Reform Act 2005 do not enable me to comment specifically on the provisions of the Equality Act or the JAC’s compliance with it; the matter for my consideration was whether the JAC had followed its own stated policy with regard to “reasonable adjustments.”

In Case B, the applicant had been suffering from back pain and had had knee surgery; the prescribed pain relief had the potential side effect of affecting his ability to recall and think rationally. He asked for a postponement on the basis that he considered himself to be disabled under the Disability Discrimination Act. The JAC was unable to postpone the interview but offered to make the panel aware of his situation. The applicant believed that he would be afforded a “reasonable adjustment” under the DDA and attended on the day, assuming this would take the form of enhancing his marks. The Selection Panel concluded that he was “not presently selectable” and did not recommend him for appointment. Having obtained feedback, he complained to the JAC that it had failed to take full account of the side effects of the medication and make an appropriate adjustment. Although the JAC could not find any evidence of maladministration it could not be sure what consideration, if any, the selection Panel had given to the details of his medication. The JAC partially upheld the complaint; the applicant was offered an automatic interview on another selection exercise for which he had applied.

In Case A’s complaint I appreciated that it must have been distressing to receive news of a family bereavement just prior to attending a selection day; and in Case B’s complaint it is understandable that medication might impact on performance before a panel. However both of these applicants had recourse to the JAC Reasonable Adjustments Team to discuss their needs. In both instances, the JAC dealt with the requests promptly with limited alternatives to offer the applicants. I did not uphold either of these complaints.

The JAC acted in accordance with its published reasonable adjustments policy, and the decisions not to recommend for appointment were consistent with the principle of selection on merit. In both cases I recommended that the JAC ensure proper records are kept, following both verbal and written requests. I was pleased that the JAC Chairman agreed with the need to keep a comprehensive record of all considerations made.

## Conduct case studies

### Case study three – Office for Judicial Complaints

A member of the Crown Prosecution Service made a complaint against a Judge's behaviour towards a CPS Prosecutor during a court hearing; it was alleged that the Judge had become increasingly angry during the hearing, raised his voice on occasions, shouted at the Prosecutor and adopted a very hostile line of questioning. The hearing was not recorded so the OJC sought comments from four people who were identified as being present.

Having received comments from three of them, the OJC dismissed the remainder of the complaint. Six weeks later, the OJC received comments from the fourth person present in court, a lawyer for the defence, which were critical of the Judge's behaviour. The OJC reopened its investigation and stated that it would refer the matter to a Nominated Judge. The Judge who was the subject of the complaint questioned whether the OJC had the power to reopen a complaint that had previously been dismissed, and the OJC asked the Lord Chancellor and the Lord Chief Justice to consider if the complaint was sufficiently serious to warrant re-opening. Their decision was that the matter should not be considered any further.

The Judge made a complaint to me asking whether the OJC had the power to reopen a dismissed complaint, and about the fairness of the decision to do so. I did not uphold this case. Whilst I appreciate that it would be upsetting for the Judge to learn that the OJC had reopened its investigation, it was not unreasonable that the OJC wanted to give further consideration to the issues in light of the defence lawyer's comments. There is no provision that explicitly prevents the OJC from reopening its investigations into dismissed complaints, and there may well be circumstances in which it is appropriate to do so.

It is arguable that it was precipitate for the OJC to have dismissed the complaint without obtaining all the verification asked for. Whilst it would have been worrying for the Judge to learn that the OJC had reopened its investigation, I do not believe that the OJC's actions were unreasonable; the OJC owes a duty to both complainants and the judicial office holder complained about. One aspect of the OJC's role is to promote public confidence in the judiciary by ensuring that concerns about judicial office holders' personal conduct are dealt with. I would have had concerns if the OJC had not given this serious consideration. It was also reasonable, once the Judge had challenged whether the OJC had the power to reopen its investigation, for the OJC to have sought legal advice, and the views of the Lord Chancellor and Lord Chief Justice; I cannot review the merits of their decision.

#### **Case study four – Office for Judicial Complaints**

A defendant in an appeal against a decision to grant adverse possession of land adjoining his smallholding, complained to the OJC. His concern was that the Judge who heard his case, and ruled against him, had links with the opposing agents and parties acting for the owners of the disputed land. The OJC dismissed the complaint as “concerning judicial case management or judicial decision making and raised no question of misconduct.” The complaint to me was that the OJC failed to conduct a proper investigation which had been biased in favour of the Judge who, he believed, had a conflict of interest which he failed to declare.

I was content that the OJC essentially followed an appropriate process in that it obtained the Judge’s comments and analysed a recording and transcript of the hearing. However, the complainant had set out a complex web of quite specific alleged personal links between the Judge and the opposing parties and their agents, some of which were indirect. The complainant felt that the Judge should have declared these links with a view to recusing himself from hearing the case. The issue was not whether the Judge knew any of the people referred to, or whether those he knew were linked to the complainant’s opponents; it was whether the Judge was aware he was linked to people connected to one side of the case to a degree that might call his fairness into question, but chose not to declare them and continued to hear the case. This might raise a question of misconduct.

I appreciated that the papers provided by the complainant were numerous and confusing, and that the OJC is neither the police nor a detective agency, but the OJC did need to consider whether there was a possibility that there could be a question of misconduct which might warrant disciplinary action. To reach this decision the OJC should have considered the links in more depth than they did. It may be that many, and possibly all, of the alleged links identified were either unexceptional or so far removed from matters before the Court that they could not, in the absence of a critical Appeal Court judgement, conceivably raise a question of misconduct.

I partially upheld this complaint and found maladministration in the OJC’s handling. The OJC did not conduct a full and adequate investigation, it was unfocussed, and poor case management caused unnecessary delay. I would have set aside the OJC’s decision, but was pleased that it agreed to re-open its investigation to consider the matters of concern; I welcomed this constructive approach.

**Case study five – Tribunal President**

The original complaint was about a Tribunal Judge who chaired a panel which considered, and rejected, an appeal regarding entitlement to Industrial Injury Disablement Benefit, a Social Security benefit paid to people who are disabled as a result of an industrial accident or industrial disease. The Regional Judge considered the complaint, and rejected it, as the complainant did not particularise any concerns about the Tribunal Judge's personal conduct. The complaint to me was that it was inappropriate that the Regional Judge considered the matter, as he had previously been involved in defending the Tribunal's decision in his appeal, and that the complaint was misinterpreted and dealt with inadequately.

I did not uphold the complaint. I was content that it was appropriate for the Regional Judge to have considered the complaint under the regulated disciplinary function, and to assess whether it raised any questions of personal conduct. It is common practice for Regional Judges to consider complaints against judicial office holders sitting in their jurisdiction and region, and legislation provides for this. The complainant argued that this created a conflict of interest that should have precluded the Judge from considering the complaint; I do not agree. The process for considering complaints is clearly distinct from the process of challenging Tribunal decisions. I have seen no evidence that the Regional Judge played any significant role in the handling of the earlier appeal.

I did not consider that the complaint had been misinterpreted; correspondence from the complainant was lengthy and confusing. The correspondence contained unsubstantiated and vague allegations of "discrimination, bias and racial discrimination." I have sympathy with the Regional Judge who was faced with the task of trawling through this correspondence in order to identify any issues that might raise a question of misconduct. It was clear from my investigation that the basis of the complaint was a challenge to the Tribunal's competence and the way it recorded, assessed and weighted material before it. The Regional Judge was correct that this related to judicial decisions and judicial case management, and this was consistent with guidance. There was no evidence of any bias, which, if proven, might have raised a question of misconduct. It would have breached the principle of judicial independence if the Regional Judge had sought to review the Tribunal's decision. I am also content that the Regional Judge conducted an adequate investigation and made appropriate enquiries.

**Case study six – Tribunal President**

The complainant had appealed to a Tribunal against a decision made by his local authority. The Tribunal rejected the appeal following a “paper hearing”, but in subsequent correspondence it was apparent that the Tribunal had not seen an email from the complainant. The Tribunal agreed to set-aside the decision reached as it could not be certain, without sight of the missing email, that the correct decision had been reached. A reconvened hearing reached a decision that was marginally more favourable to the complainant.

The complaint about the Tribunal was made to the Tribunal President; his response was that whatever did or did not go right at the original hearing had been remedied and superseded by the decision to refer the matter to a fresh panel. The complaint to me was that the President had refused to deal with his concerns, had been rude, had refused to speak to him, and had not provided details of the Ombudsman’s remit.

I did not uphold this complaint, although I did have some concerns about the handling of the original complaint. The President declined to respond explicitly to many of the points made by the complainant, but this was acceptable as these points were about judicial decisions and judicial case management, and did not raise a question of misconduct. The President was unaware that complaints against members of this Tribunal should be considered under the regulated disciplinary function, and he did not refer to the relevant legislation when responding to the complainant.

That said, I agree with the President’s assessment that the complainant did not provide a shred of evidence to suggest any personal misconduct by those who sat on the original panel. The President cannot review the merits of judicial decisions when considering complaints under the regulated disciplinary function. The President did review all the correspondence, and there was nothing to indicate that he should have taken the exceptional step of discussing matters with the complainant on the telephone; nor do I believe that he was rude to the complainant. I was concerned that the President’s response did not mention my role, however I appreciate that this resulted from a general lack of awareness that other legislative changes had brought the process for handling complaints about the Tribunal within the wider arrangements for dealing with Judicial Office Holders’ personal conduct. Although this is worrying, it indicates that the President did not take a deliberate decision not to advise the complainant of his right to complain to me. Any shortcomings in these matters did not amount to maladministration.

### **Case study seven – Magistrates’ Advisory Committee**

Two magistrates complained that a third magistrate who sat with them failed to fully participate and accept a majority decision in the retiring room, and subsequently displayed this disagreement in court by turning away from colleagues during sentencing. The magistrate complained against applied to me as he was concerned that he had been treated unfairly by the Advisory Committee and that the matter had taken an excessive time to reach a conclusion.

The Advisory Committee Chairman referred the original complaint to the Bench Chairman to deal with pastorally, rather than as a disciplinary matter. However the magistrate refuted the allegations made and stated that those colleagues complaining about him had “made distortions and lied”. The Bench Chairman therefore referred the complaint back to the Advisory Committee, (complaint 1) but then also complained himself that the magistrate had brought the Magistracy into disrepute by accusing his colleagues of lying (complaint 2).

The Advisory Committee sought the advice of the OJC. It stated incorrectly that complaint 1 had been dealt with so it only needed to deal with complaint 2. The Advisory Committee therefore informed the magistrate of this and set up a panel to consider complaint 2. The panel recommended disciplinary action for accusing colleagues of lying. I had some concerns that this infringed natural justice, as the magistrate had merely defended himself in a private and confidential meeting. The panel’s recommendations were not accepted by the Lord Chancellor and the Lord Chief Justice’s designated Judge.

Some months later the OJC reviewed its advice and concluded that it had been wrong to state that complaint 1 had been dealt with. It accepted that the original complaint had been left “hanging in the air”. It therefore instructed the Advisory Committee to investigate complaint 1. A conduct investigation panel recommended disciplinary sanction on this complaint and the Lord Chancellor and the Lord Chief Justice’s designated Judge accepted this advice.

I upheld this complaint, finding maladministration on the part of the OJC in providing incorrect advice, and on the part of the Advisory Committee which had not queried this advice even though the Bench Chair had commented that the original complaint had not been properly concluded. I was concerned that the magistrate had been informed that the original complaint against him had been concluded without any disciplinary action; he was then informed that he would be disciplined for a related matter, and was finally made to wait many months for the original complaint to be properly concluded. I took into account the fact that the magistrate had not fully engaged with the disciplinary process and had himself delayed matters. I recommended that the OJC and the Advisory Committee provide an apology to the magistrate for their failings in this case.

**Case study eight – Magistrates’ Advisory Committee**

A complaint was made by a local businessman about a magistrate with whom he had a dispute over the settlement of an invoice after the cancellation of his service. Following verbal and written exchanges between the parties, the businessman circulated their correspondence to his other customers in the village. His complaint to the Advisory Committee was that the magistrate had threatened his business, threatened to cancel a cheque, and used the suffix JP in an attempt to intimidate him. The Advisory Committee upheld one aspect of the complaint, namely that the JP suffix had been used inappropriately in private correspondence; the other allegations raised were matters for other agencies to consider.

The complaint to me was that the Advisory Committee did not deal with the main issue of the complaint.

I found that the Advisory Committee did consider the points he had raised in his correspondence; it wrote to the JP for his comments and an explanation, and it convened a Conduct Investigation Panel to consider the matter, and accepted its recommendations. The Panel considered documentation from the complainant and the JP, together with information about the magistrate’s record of conduct, and the Declaration of Undertaking, which governs the use of the JP suffix. It decided that the only matter that fell within its remit was the use of the JP suffix, and it determined that the magistrate had made an error of judgement and a genuine mistake in using it in correspondence. It found that there was no intention to intimidate the complainant as he was already aware that he was a magistrate; the matter had occurred in a private capacity which did not impact on his judgement as a magistrate. They recommended that the matter be dealt with pastorally.

I did not uphold this complaint as I was content that the Panel considered the matter properly and came to a conclusion consistent with the evidence, and in accordance with legislation and guidance. It might have been helpful if the Advisory Committee’s letter to the complainant had conveyed the JP’s acknowledgement that it had been unacceptable for him to use the JP suffix, but there was no maladministration in omitting this information from the letter.

## Annex C

### Summary of Performance against Business Plan targets

Our strategic aim in undertaking independent investigations into complaints is to maintain an effective, responsive and professional service which is delivered in a timely, consistent and transparent manner.

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

<b>PT 1</b> – to deal with all enquiries and requests for information, including when a potential complaint is not within the Ombudsman’s remit, by providing a full reply explaining our reasons within 5 working days, in 97% of cases.	Achieved (100%)
<b>PT 2</b> – when an initial investigation is required to establish if the potential complaint is within the Ombudsman’s remit, we will conclude this evaluation of validity, and provide a full reply within 30 working days or 6 weeks, in 80% of cases.	Achieved (97%)
<b>PT 3</b> – when a case becomes ready for investigation we aim to keep all complainants fully informed on a monthly basis in 97% of cases.	Achieved (98%)
<b>PT 4</b> – when complaints are finalised we aim to have 90% completed with 100% factual accuracy. (i.e. no issues raised post complaint which have caused the Ombudsman to review his original findings)	Achieved (95%)
<b>PT 5</b> – to acknowledge receipt of correspondence from complainants within 2 working days of receipt.	Achieved (when not covered by PT 1)
<b>PT 6</b> – to deal with 90% of all correspondence received within 15 working days of receipt.	Achieved (99%)

<p><b>Our second business objective is to continue to improve our processes and our service delivery, to ensure we deliver an effective, responsive and professional service to all our users.</b></p>	
<p><b>Our Key Performance Indicators are:</b></p>	
<p>to keep our working practices under constant review; ensure our leaflets and forms are up to date; welcome feedback from our customers, learning from any complaints that we receive about our service, and work creatively to build and maintain our capability to deliver our service. We will ensure that our staff are fully trained and maintain a high level of skill in Complaints Handling and Investigations and we continue to manage and monitor sickness rates to contribute to meeting the MoJ's target to reduce absences to an average of 7.5 days a year per member of staff by March 2012.</p>	<p>All Achieved</p>
<p><b>Our third business objective is to deliver our business in the most cost effective and efficient manner, and to operate efficiently.</b></p>	
<p><b>Our Key Performance Indicators are:</b></p>	
<p>to operate within our budget, and in accordance with the relevant governance arrangements and to maintain constructive working relationships with all stakeholders.</p>	<p>Achieved</p>

**Annex D****Forecast and Actual Expenditure**

	<b>Forecast</b>	<b>Actual</b>
Staff costs and salaries	504,000	448,000
Office expenditure, Accommodation and IT Services	9,400	3,200
Service costs and Miscellaneous	9,400	2,000
Training	10,000	3,500
Travel and subsistence	1,200	300
<b>Total expenditure</b>	<b>£534,000</b>	<b>£457,000</b>

## Annex E

### Data since role of Judicial Appointments and Conduct Ombudsman was established

Financial year		2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
Cases received		304	314	278	379	470	647
Cases determined		37	101	103	70	67	73
<b>Conduct (OJC, Tribunal, Advisory Committee)</b>		4 upheld or partial 10 not upheld	10 upheld or partial 63 not upheld	44 upheld or partial 47 not upheld	21 upheld or partial 33 not upheld	14 upheld or partial 39 not upheld	14 upheld or partial 54 not upheld
<b>Appointments (JAC)</b>		5 upheld or partial 18 not upheld	1 upheld or partial 27 not upheld	1 upheld or partial 11 not upheld	0 upheld or partial 16 not upheld	2 upheld or partial 12 not upheld	0 upheld or partial 5 not upheld
<b>Ombudsman's Time (Days per week)</b>		2	3	3.5	3.5	2.5	2.5
<b>Staff Resources (excl Ombudsman) (Headcount)</b>		9	10	10	10	10	10 (9.4 FTE)
<b>Budget</b>	<b>Forecast</b>	606,563	609,705	596,500	600,000	591,000	534,000
	<b>Actual spend</b>	475,392	494,894	564,708	584,928	539,428	457,000



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