

Judicial Appointments &
Conduct Ombudsman

Annual Report 2010-11

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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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This publication is also available for download at www.official-documents.gov.uk and is also available from our website at www.judicialombudsman.gov.uk.

ISBN: 9780102972481

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID 2434010 07/11 12496 19585

Printed on paper containing 75% recycled fibre content minimum

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The Ombudsman's Statutory Remit

I am a Corporation Sole and act independently of Government, the Ministry of Justice (MoJ) and the Judiciary. The Constitutional Reform Act 2005 empowers me 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 their 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 OJC, a Tribunal President or a Magistrates' Advisory Committee.

In judicial appointment complaints, I 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, I 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 I have concluded that maladministration led to the original decision being unreliable, I can set aside that decision and direct that a new investigation or review be undertaken (in whole or in part). I can recommend payment of compensation for loss suffered as a result of maladministration.

Overview

This is my fifth Annual Report as the Judicial Appointments and Conduct Ombudsman.

My aim is to ensure that maladministration is identified and, where practicable, rectified. I also act as a catalyst for improving complaint handling by first tier organisations, with the long term purpose of significantly reducing the number of cases that reach me. I owe an equal “duty of care” to both complainants and those complained about.

A review of Judicial Appointments and Judicial Arms Length Bodies was conducted this year. I was pleased to note the Lord Chancellor’s statement to Parliament in November which stated that:

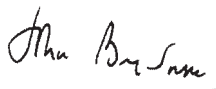
“... (the JAC and) the Judicial Appointments and Conduct Ombudsman will remain in place as valued independent bodies, which do much to bring openness to the way candidates are selected for judicial appointments.”

In 2010/11, I received 470 complaints against a 2009/10 figure of 379 (a 22% increase). Over the last 5 years there has been a 392% increase over the figure of 120 estimated by the then Department of Constitutional Affairs, when my post was first established. In contrast, my Office’s budget has reduced and staff numbers have remained unchanged.

In 2010/11, 6 cases concerned the handling of applications for judicial appointment, 418 the handling of complaints about the personal conduct of judicial office holders, and 46 “miscellaneous”. I attribute the ever continuing increase to a greater awareness of my post, and the quality of my team’s investigative work.

Whilst there have been some process improvements, it is disappointing that many of the “common failings” in investigations by the first tier organisations have remained largely unaltered from those set out in my previous Annual Reports. I can only report those failings, and make suggestions for how things could be improved; I have no authority to implement remedial measures. All first tier investigating bodies need to develop a better “learning and sharing” culture.

Finally, I would like to thank my team for their excellent work in what has been our most demanding year to date with, again, a further significant increase in workload, ever more complex complaints and a reduction in resources. They go out of their way to help everyone who contacts them, regardless of whether their concerns relate to my office. I am most grateful to them for the high level of service they provide.



Sir John Brigstocke KCB

Performance

Targets

My office has achieved all the targets set out in our 2010/11 Business Plan (see Annex C).

We check *all new complaints* within 5 days of receipt to assess whether they fall within my remit. The increased volume of cases and enquiries (470 compared to 379 in 2009/10) makes this a very challenging target; however, we remain committed to providing a high level of customer service. After careful consideration by an experienced caseworker, 46 cases were found to fall outside my remit as they did not concern matters relating to appointments and conduct. Where appropriate, complainants were referred to another organisation which could assist them. In a further 210, which did relate to appointment and conduct issues, either no complaint had been made to the first tier organisation or the complaint had not been adequately particularised. The complainants were all given a full written explanation detailing the reasons why I could not investigate their concerns.

We continue to *fast track* complaints that require a more detailed initial evaluation of validity; I then determine whether or not the complaint requires a full investigation. In 214 cases my staff considered the cases most carefully, 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, I deemed a full investigation to be unnecessary in a further 122 cases, compared to 85 last year. I wrote to the complainants accordingly, and in considerable detail.

In 72 of the 470 cases received (15%), a *full investigation* was required. These cases were thoroughly investigated, involving liaison with the complainant and the first tier organisation, and the review of a high volume of documentation. Formal investigations can often take a long time in order to ensure a fair, thorough and balanced investigation; many of the issues are complex. I determined 67 cases this year. My staff keep complainants regularly informed of progress throughout.

We continue to receive *post complaint correspondence*, but none of the issues raised have caused me to revise my original findings.

Overall outcome

The way I approach second tier complaint handling continues to achieve encouraging results. This enables us to concentrate our resources on those cases that do fall within my remit, and which may indicate some failings of the process at the first tier. Cases dealt with under our fast track procedures accounted for around 80% of our work, with the majority completed within 6 weeks of receipt.

Data throughout my term as Ombudsman

Financial year	2006/07	2007/08	2008/09	2009/10	2010/11
Cases received	304	314	278	379	470
Cases determined	37	101	103	70	67
Conduct (OJC, Tribunal, Advisory Committee)	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
Appointments (JAC)	5 upheld or partial upheld 18 not upheld	1 upheld or partial upheld 27 not upheld	1 upheld or partial 11 not upheld	0 upheld or partial 16 not upheld	2 upheld or partial 12 not upheld

This shows that:

- the number of cases received in 2010/11 has increased by 91 (22%) compared to 2009/10; this indicates that people are increasingly aware of my service;
- a slightly lower number of cases have required full investigation and determination; all cases that were transferred for full investigation had been correctly assessed as having issues that warranted detailed consideration;
- a higher number of cases (122 compared to 85 last year) were subject to a fast track detailed evaluation of validity to determine whether or not the case came within my statutory remit;
- our fast track system is working well in assessing which cases fall within my remit, and enables us to concentrate our investigative resources in this area; and
- the vast majority of complaints continue to concern judicial conduct; 418 compared to 309 last year, an increase of 109 cases (26%). Not all of these fell within my remit, or needed a full investigation.

Common themes emerging from investigations

Appointments

The Judicial Appointments Commission

- I have seen a significant decrease in the number of appointment related complaints this year (6 compared to 29 last year). The JAC has run less Selection Exercises in the course of this year, compared to last, and there have been less complaints about the Qualifying Test, which indicates that applicants are getting used to this form of sift criteria;
- I had concerns in one case about the adequacy of the JAC's response to the initial complaint; this could have been better explained to the complainant; and
- I upheld one case as I had real concerns about how the Selection and Character Committee (SCC) records its decisions about which candidates are recommended to the Lord Chancellor for appointment. With no audit trail, however brief, to support the decision made by the Committee, I was unable to reassure the complainant that the decision not to recommend him for appointment was based entirely on merit.

Conduct

The Office for Judicial Complaints

- 282 complaints, compared to 209 last year;
- unnecessary delay; poor record keeping and case management; not keeping complainants informed of the progress of their complaint;
- failure to record key issues from telephone conversations or when tapes of court hearings are listened to;
- failing to make enough enquiries or to give complainants an opportunity to provide further information;
- failing to note that a new conduct complaint was being made amongst numerous issues of judicial decisions or case management;
- insufficient care with dismissal letters to ensure that the investigation process is clearly explained and that letters are appropriate and unambiguous;
- delay in sending out a letter giving a judicial office holder 10 days to request a Review Body; and
- concern about the OJC marking its correspondence as "Restricted" stating that it could not be copied to a wider audience without the author's permission.

Tribunal Presidents¹

- 104 complaints, compared to 77 last year;
- lack of knowledge of the complaints process within one particular Tribunal; complaints seemingly a low priority amongst some investigating judicial office holders who clearly have other responsibilities and priorities;

¹ or a judicial office holder designated by the President under rule 4 (1) of 'The Judicial Complaints Tribunals (No.2) Rules 2008'.

- considerable delay in the handling of complaints;
- the need to make sufficient enquiries or to seek verification that is demonstrably independent; and
- the inadequacy 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, particularly when some aspects have been rejected, and others upheld.

Magistrates' Advisory Committees

- 32 complaints, compared to 23 last year;
- failing to make adequate enquiries including independent verification;
- instances of considerable delay in the management of complaint cases, particularly when cases are passed between neighbouring Advisory Committees when there is a conflict of interest; delay in forwarding documents to the complainant;
- inadequacies in the Advisory Committee decision letters, which led complainants to believe that their complaints had not been fully considered; 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.

Further commentary on themes

It is disappointing how similar the above themes are to my findings in previous years.

These process shortcomings are known to the first tier organisations and the MoJ, and I am aware that some improvements have been made. Whilst the number of complaints about Advisory Committees is small, many of these stem from personal disputes between JPs, or neighbour disputes, rather than the judicial office holder's behaviour on the bench. This can result in complex, and often unnecessary, investigations.

The proposed reduction in the number of Advisory Committees and the creation of HM Courts and Tribunals Service provide an opportunity for complaints to be handled in a more consistent manner. For examples, see Case Studies at Annex B.

Complainants and Stakeholders

Our communications

We encourage people to make use of our website www.judicialombudsman.gov.uk and, in particular, our “on-line” complaint form.

Working with Stakeholders

We have maintained constructive relationships with all our stakeholders, including the Lord Chancellor and the Lord Chief Justice. During the course of the year I have met with senior officials within the MoJ, the Head of the OJC and the Chairman of the JAC. I continue to be an Associate Member of the British and Irish Ombudsman’s Association (BIOA).

Complaints against my Office

Five complaints were received this year about the administrative service provided by my office.

- In one case it took time to establish that a particular Tribunal now falls within Schedule 14 of the Constitutional Reform Act, following amendments made in 2009. We apologised for this delay and are investigating the complaint.
- A complaint was made that a member of staff had been unhelpful in assisting the complainant to particularise his complaint. The member of staff had been incredibly helpful, but the matter was outside my remit and the complainant had difficulty in accepting that there was nothing my office could do for him.
- We received three complaints about the time it had taken us to investigate complaints. This had resulted from a backlog of cases awaiting investigation in my office. In each case we apologised for the time taken and kept the complainant informed on a monthly basis.

Corporate Governance

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.

Information assurance

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

Staff resources

Our staffing level has not changed despite a very significant increase in cases, (we continue to have an office of 10 staff, plus the Ombudsman). My office has a very low level of sick absence, an overall average of 3 days per person, 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

Tighter financial constraints have made us look at more innovative ways of training our staff to ensure our capability to develop and deliver our business. All JACO staff are fully trained, with a high level of complaints investigation experience between them.

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 policies, 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. FOI and DPA aspects continue to be an increasing area of work, and, 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

Annex A**2010/2011 Statistics****Breakdown of complaints received**

	Total number of cases received	Appointment-related cases received	Conduct-related cases received	Other enquiries received
April	33	2	28	3
May	35	1	31	3
June	50	1	42	7
July	33	–	32	1
August	50	–	45	5
September	38	1	34	3
October	34	–	33	1
November	49	–	40	9
December	29	–	27	2
January	32	1	29	2
February	47	–	42	5
March	40	–	35	5
	Number of complaints	Appointment related cases	Conduct related cases	Other enquiries received
TOTALS	470	6	418	46

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
418	282	104	32

Breakdown of cases finalised²

	Cases dealt with at 1st level – ‘initial check’	Cases finalised at 2nd level – ‘fast track’	Cases finalised following a 3rd level ‘full investigation’ ³
Appointment	1	0	14
Conduct – relating to OJC	148	82	31
Conduct – relating to Tribunals	50	28	14
Conduct – relating to Advisory Committees	11	12	8
Total	210	122	67

Cases investigated, determined and finalised⁴

	Not upheld	Upheld and partially upheld	Total
Appointment	12 (86%)	2 (14%)	14
Conduct – relating to OJC	23 (74%)	8 (26%)	31
Conduct – relating to Tribunals	11 (79%)	3 (21%)	14
Conduct – relating to Advisory Committees	5 (63%)	3 (37%)	8

² 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.

³ Of cases received in 2010/11, 72 required full investigation

⁴ 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 – JAC

An applicant for selection had been placed on a list of candidates drawn up for consideration in respect of anticipated vacancies. He was not offered an appointment during the currency of the list, and he complained that the JAC had created an unreasonably large list and did not address the points he raised in his original complaint.

The fact that the candidate was placed on the list indicates that he performed well in the competition, and it was not unreasonable for him to have concluded that he stood a good chance of appointment. This would have been disappointing and frustrating, and I could see why the candidate believed the list was too long. However, the Constitutional Reform Act requires the JAC to have regard to the number of vacancies for which the Lord Chancellor expects to request selections. The JAC did just that. A significant proportion of those on the list were not offered appointments, and I did not consider that this was maladministration.

I was concerned, however, that in dealing with the original complaint, the JAC did not address the specific points complained about; the complainant had expressed concerns about the size of the list and how this had impacted on him, but the JAC replied only in general terms. I upheld this aspect of the complaint; failing to respond adequately to the initial complaint amounted to maladministration.

Case study two – JAC

An applicant for selection complained to me that, as he had performed very well in the selection process, it was unclear why he had not been recommended for appointment; he felt that the bar in relation to this appointment had been set higher for him than for other candidates.

The JAC were unable to provide me with a record of how the applicants' performance and candidature had been discussed and considered by the JAC's SCC. Some candidates who had seemingly been ranked lower by the earlier Selection Panel Assessment had been recommended for appointment, and some candidates who had been ranked higher were not recommended because the SCC felt that they were not the most meritorious.

Whilst I accept that the role of the SCC is to look at the whole range of evidence of a candidate's merit, including the Selection Panel Assessment, I would have expected to see deviations from the selection panel results to be clearly recorded. In this case, there was no audit trail of the key points of the deliberations that took place, or the reasons behind the decision not to recommend this candidate for appointment; thus I had no way of assuring the complainant that the decision not to recommend him for appointment was consistent with the principle of selection on merit.

I upheld this aspect of the complaint; the absence of an adequate audit trail amounted to maladministration. I was pleased that the JAC agreed to take forward a number of measures to improve the recording of key decisions.

Conduct case studies**Case study three – Office for Judicial Complaints**

A complaint arose following a court hearing, where it was alleged that the Judge had laughed and sneered at the complainant. The complaint to me was that the OJC had conducted a superficial investigation and did not pursue the fact that tapes of the hearing were missing.

The OJC must seek to verify independently what happened rather than preferring the views of either the complainant or the judicial officer, if there is a difference of opinion as to what happened, unless doing so is disproportionate. In this case the OJC took steps to listen to the tapes of the hearing and subsequently approached third parties who were present when it was clear that the tapes did not cover the whole hearing.

I was concerned, however, that the note taken when the OJC listened to the tape indicated that the judge had laughed at some points, but there was no record as to whether the laughter was sarcastic or malicious.

I partially upheld this complaint. My remit enables me to set aside a determination and require that the OJC reconsider a complaint if problems in the process followed render the decision unreliable. I did not do so in this case as the OJC subsequently agreed to listen to the tapes of the hearing again. I am pleased that the OJC has agreed to remind its caseworkers of the need to take and maintain complete and accurate records of their observations at the time that they listen to recordings of hearings.

Case study four – Office for Judicial Complaints

A number of complaints were made about seven Judges who had presided over numerous hearings involving the complainant's divorce application. The complaint to me was that the OJC's investigation was inadequate. I found that the OJC dismissed many of the concerns on the basis that they related to judicial decision or judicial case management and did not raise a question of misconduct. These decisions were consistent with legislation and guidance; the OJC sought the views of some of the judges involved and took steps to verify what had happened by listening to the recording of the hearing.

The OJC dismissed one of the complaints as the Lord Chancellor and Lord Chief Justice had directed that the complaint should be dismissed as unsubstantiated, as he was a vexatious complainant and it was the fifth complaint he had made against one judge that was without substance.

The OJC's guidance indicates that it will consider all complaints, but there will inevitably be instances when it may not be appropriate to do so, and where it is clear that someone is repeatedly making allegations that are without substance but are time consuming to deal with, thereby impacting on the service provided to others. There must come a time when a publicly funded body can refuse to consider such matters and the Judicial Discipline (Prescribed Procedures) Regulations 2006 enable the OJC to dismiss complaints that are vexatious.

I did not uphold this complaint. I found that it was not unreasonable to have considered, given the history and pattern of the complainant's contacts with the OJC, whether his complaints were vexatious, and for the Lord Chancellor and Lord Chief Justice to have given weight to this in deciding that his concerns should be dismissed as unsubstantiated. The OJC properly sought the views of the Nominated Judge before asking the Lord Chancellor and Lord Chief Justice to consider the matter and they took account of his advice.

Case study five – Tribunal President

Following an investigation by a Tribunal President, a complainant alleged that his complaint had not been fully investigated: the Judicial Complaint (Tribunals) Rules 2008 were not adhered to; the complaint was not dealt with quickly enough, and the reasons given for the delay were not acceptable.

The process for considering this complaint was straightforward, and guidance envisages that complaints which are summarily rejected could be handled within a week; it should not have taken in excess of six months to provide a substantive response. A number of promises were made that the complaint would be dealt with soon which were not kept, and there was no attempt to keep the complainant proactively informed of progress. The complainant reminded the Tribunal on a number of occasions, and I doubt whether he would ever have received a response if he had not contacted my office. The Tribunal was not able to locate a letter from their file that they said had been sent to the complainant; on balance I considered that this letter had not been sent, indicating that record keeping within the Tribunal in respect of complaints against its own judicial office holders was poor. I found that collectively these issues amounted to poor case management and customer service, amounting to maladministration.

I was also concerned about the apparent lack of awareness within this Tribunal of the judicial complaints procedure that had been in statute since April 2006. I was left with the feeling that the handling of judicial complaints was seen as a low priority. I found that this lack of awareness also amounted to maladministration.

I was pleased with the President's assurance about future complaint handling within the Tribunal; the Senior President of Tribunals also assured me that this was an isolated case, and that he was reviewing his complaints handling procedures.

Case study six – Magistrates Advisory Committee

A complaint arose following a court hearing, where the complainant alleged that the magistrates who heard his case were corrupt and that they racially discriminated against him. The Advisory Committee (AC) considered this, and decided that the complainant had not particularised matters, and that his concerns related to a judicial decision or judicial case management, rather than misconduct.

The complaint to me was that the AC did not deal with his complaint properly, were prejudiced against him, and gave him the wrong address for my office.

I was content that the AC did treat the allegation of racial discrimination very seriously, giving the complainant the opportunity to provide specific examples of what was said or done that pointed towards discrimination on racial grounds. The AC sought further verification from the magistrates complained about, considered a note from the Court Chairman, and made enquiries of the CPS. Although the complainant stated that his complaint was about racial discrimination, he was not able to provide specific examples of what the magistrates had said that would constitute personal misconduct. I found nothing to suggest that the AC was prejudiced against the complainant.

I did not uphold this complaint. I was content that the AC followed an appropriate process in rejecting the complaint as it did not raise a question of misconduct. I was, however, concerned that the AC did not provide the complainant with my correct address. Accordingly I used my discretion to investigate the concerns even though they were made more than 28 days after his complaint was dismissed; this was a minor error, and did not amount to maladministration.

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:

PT 1 – 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%)
PT 2 – 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 (96%)
PT 3 – when a case becomes ready for investigation we aim to keep all complainants fully informed on a monthly basis in 97% of cases.	Achieved (99.6%)
PT 4 – when complaints are finalised we aim to have 90% completed with 100% factual accuracy. (i.e. no issues raised post complaint which have caused Ombudsman to review his original findings)	Achieved (100%)
PT 5 – to acknowledge receipt of correspondence from complainants within 2 working days of receipt.	Achieved (when not covered by PT 1)
PT 6 – to deal with 90% of all correspondence received within 15 working days of receipt.	Achieved (98.5%)

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 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 2011.

All Achieved

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 accordance with the relevant governance arrangements and to maintain constructive working relationships with all stakeholders

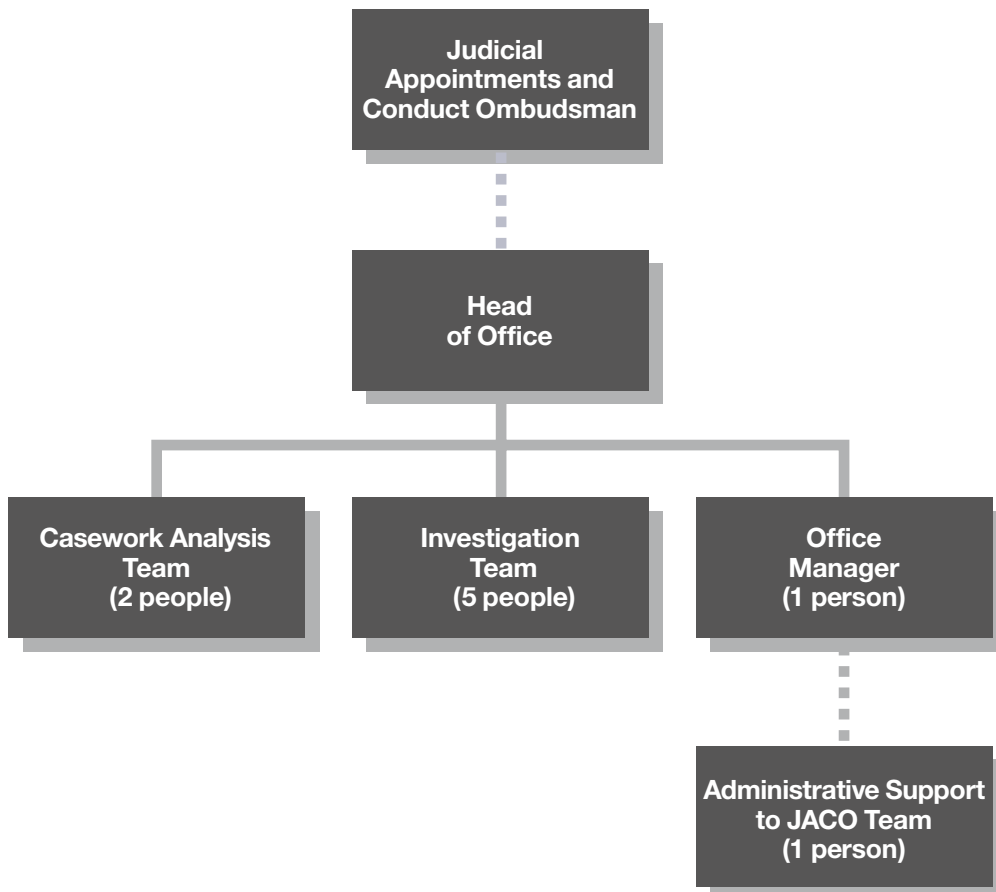
Achieved

Annex D**Forecast and Actual Expenditure**

	Forecast	Actual
Staff costs and salaries	565,340	525,344
Office expenditure, IT Services and miscellaneous	13,660	7,012
Training and Travel and Subsistence	12,000	7,072
Total expenditure	£591,000	£539,428

Annex E

Organisational structure





information & publishing solutions

Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

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ISBN 978-0-10-297248-1



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