

Judicial Appointments &
Conduct Ombudsman

Annual Report 2012-13

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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 Ombudsman is a Corporation Sole who 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 maladministration led to the original decision being unreliable, he can set aside that decision and direct that a new investigation or review be undertaken (in whole or in part). He can also recommend payment of compensation for loss suffered as a result of maladministration.

Overview

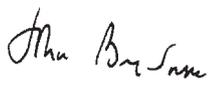
This is my seventh Annual Report and comes at the end of the busiest and most challenging year since I took up my post in 2006. My aim in undertaking independent investigations into complaints is to ensure that the processes for applying for judicial appointments, and for dealing with complaints about judicial conduct, are consistently and correctly followed. Where I find maladministration, I look for rectification and redress. I also act as an essential catalyst for improvement by first tier organisations, with a view to reducing the number of cases that reach me. I exercise an equal duty of care to both complainants and to those complained about.

In 2012/13 I received 810 complaints and written enquiries. This is a 25% increase on 2011/12 and a 72% increase from 2 years ago. Last year I received just 10 complaints about the judicial appointments process, which is a credit to both the JAC's processes and to its complaint handling. 482 complaints and enquiries concerned the personal conduct of judicial office-holders. A further 318 complaints fell outside my remit. In addition to written complaints and enquiries the JACO team also dealt with a large number of telephone calls.

The year has seen a number of new and different issues that have challenged both me and the MoJ lawyers. Last year I reported an improvement in the OJC's case management but, recently, there have been a number of instances where this has dipped below the standards previously achieved. I am aware that the OJC has carried several long term vacancies this year, and I know that the OJC's Senior Management takes these matters seriously. The Head of the OJC is working proactively, both within the OJC and with officials in my office, to address the problem. Complaints about Tribunals and Magistrates continue to remain at a relatively low level, and we are working to ensure that my recommendations are given appropriate attention at all levels, including Advisory Committees and Tribunals.

I was pleased to continue my active role in the Working Group reviewing the rules and regulations governing judicial discipline, and I look forward to seeing the new procedures in action once they are implemented later in 2013.

Finally I would like to thank my team for their excellent work. They have coped extremely well with an unprecedented increase in workload, and they go out of their way to ensure that I receive the full support that I need to carry out my statutory responsibilities, and to help everyone who contacts them, regardless of whether their concerns relate to my office. I am grateful to them for the professional, effective and responsive way in which they carry out their duties. I would also like to thank Karamjit Singh CBE for acting as Temporary Ombudsman in a case where I stood aside having identified a potential conflict of interest.



Sir John Brigstocke KCB

Performance

Targets

The JACO office has achieved all the targets set out in the 2012/13 Business Plan (see Annex C).

All correspondence and complaints are checked to assess whether they fall within remit. The increased volume of cases and enquiries (810 compared to 645 in 2011/12) continues to be a challenge; however, we remain committed to providing a high level of customer service. The vast majority of complaints continue to concern judicial conduct; 482 compared to 466 last year, an increase of 16 cases (3%).

After consideration by a caseworker, 318 cases, a significant increase (55%) on last year, were found to fall outside the Ombudsman's remit as they did not concern matters relating to judicial appointments or conduct. Where appropriate, complainants were referred to another organisation which might be able to assist. This figure continues to rise year on year. In a further 236 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 their complaint could not be investigated, and most accepted the Ombudsman's decision without demur.

Complaints that do come within the JACO remit require a more detailed initial evaluation of validity, and are fast-tracked to determine whether or not the complaint requires a full investigation. JACO staff considered 214 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 144 cases, compared to 128 last year. The Ombudsman wrote to these complainants, and again most accepted the explanation, and the matters were concluded without a full investigation. A full investigation was required in 70 of the 214 cases that raised issues that came within remit (33%); many of these were very time consuming, highly complex and sensitive.

Overall 76 cases were determined during the year (including cases carried forward from last year), plus 1 which was delegated to a Temporary Ombudsman. 7 of these were from Judicial Office Holders whose own conduct had been considered under the regulated disciplinary function. 25 of the complaints (32%) in which a full investigation was completed were upheld. At first glance, a finding that there was maladministration in nearly a third of cases might appear worrying, as is the

increase in the proportion of cases upheld from 12% in 2011/12. However, looking beneath this figure it is relevant to note that:

- there was maladministration in 2 JAC cases, whereas there was no maladministration in 2011/12. The JAC's selection processes are generally very good and the concerns that resulted in two cases being upheld were not at the most serious end of maladministration. The JAC has taken steps to prevent a recurrence;
- the highest incidence of maladministration came in cases in which the OJC was involved. 17 complaints (63%) were upheld or partially upheld, an increase from 26% during 2011/12. However, this has been a particularly difficult period for the OJC and it has taken positive steps to remedy the more serious concerns identified by the Ombudsman;
- the number of Tribunal complaints upheld rose slightly from 3 to 5 (15% to 25%). This was broadly the same proportion of cases upheld in the years prior to 2011/12; and
- Only 1 complaint against an Advisory Committee was upheld or partially upheld (this constituted 20% of finalised investigations into Advisory Committee matters - a reduction from 37%).

We have also compared the number of complaints upheld with the number that the Ombudsman considered, including those not accepted for full investigation as there was no prospect that he would find maladministration. This shows a finding of maladministration in 13% of OJC cases and 11% of conduct cases overall. This is a better indicator of the incidence of maladministration.

It is also helpful to compare the numbers of complaints that were upheld with the overall numbers of applications for judicial office and conduct complaints. There were in excess of 4,000 applications for judicial office in 2012/13, and the OJC determined 2,154 complaints in 2012/13 (we have not asked for these figures in the past and they were not available for Tribunal Presidents or Advisory Committees. We have asked for figures to be available for future reports). In this light the incidence of maladministration is very low; for example the number of OJC cases in which the Ombudsman found maladministration equates to less than 1% of its caseload.

Redress

In 12 conduct cases a finding of maladministration rendered the initial decision reached by the first-tier body to be unsafe. In these cases the Ombudsman would have used his powers under section 111(5) of the Constitutional Reform Act 2005 to set the decision aside. He did not do so as the relevant first-tier investigating body agreed to reopen the complaint; this is a welcome and positive approach.

The Ombudsman recommended compensation in 2 conduct cases; 1 for £32 for costs incurred in pursuing the complaint, and the other for £200 compensation on account of distress resulting from a failure to keep the complainant updated for long periods.

Post investigation correspondence and challenges to JACO decisions

This year the Ombudsman responded to 26 pieces of correspondence sent in response to his reports, and the Temporary Ombudsman responded on 2 occasions. There were no instances where the Ombudsman altered his findings or reopened an investigation. There have been 4 legal challenges: the Courts struck out two; the Ombudsman was identified as an interested party in unsuccessful Judicial Review proceedings brought against the JAC; and one complainant was given leave to apply for Judicial Review, which was dismissed.

Overall Outcome

The approach taken by the JACO office in second-tier complaint handling continues to achieve encouraging results, enabling vital resources to be concentrated on those cases that fall within the Ombudsman's remit, and which may indicate some failings or concerns about the process at the first-tier. Cases dealt with under the JACO Fast Track procedures accounted for around 80% of all cases that were identified as being within remit, and were all dealt with within 6 weeks of receipt.

The process of formal investigation, where a full review of a first-tier complaint is deemed necessary, can often take a long time in order to ensure a fair, thorough and balanced investigation; many of the issues considered are complex and sensitive and they can require in-depth discussions with the body complained about. JACO does not, therefore, have a target for completing full investigations. However, the time taken to conduct such investigations has fallen in comparison with previous years, even though the number of cases finalised during the year has increased slightly. The JACO team deserve considerable credit for this.

Emerging themes and issues arising from investigations

Appointments – the Judicial Appointments Commission

9 cases were determined in 2012/13, compared to 7 the previous year. Two cases were upheld, although the Ombudsman did not recommend any redress. Issues requiring investigation in finalised investigations included:

- JAC guidance about the nature of a Qualifying Test;
- whether the JAC's application form provided candidates with sufficient scope to identify the vacancies, both full-time and part-time, in which they were interested;
- the scope of the JAC's Reasonable Adjustment Policy and whether the sort of assistance that might be available was adequately explained;
- whether responsibility for obtaining evidence from a candidate's personal referees rested with the JAC or the applicant; and
- the weight that the JAC gave to performance at a Selection Day compared to other sources of evidence, including appraisal reports.

In addition one complaint that had not been resolved at the end of the year included allegations that the JAC's arrangements for an on line Qualifying Test were flawed. The candidate pointed out that the arrangements enabled candidates to take more than the suggested time for reading background material prior to starting the test and that there was no indication that the JAC undertook an investigation before concluding that the test did not need to be re-run.

Conduct – the OJC

292 complaints were received during 2012/13, compared to 276 last year. 44 cases were determined, of which 17 were upheld or partially upheld (an increase of nearly 90% on 2011/12). Issues requiring investigation included:

- the OJC's handling of a report from a Conduct Investigation Panel, including the time taken to resolve matters, whether the matter could be concluded if litigation was ongoing, and the extent to which the complainant was kept informed;
- a number of allegations about the OJC's case management, including unnecessary delay, poor case management, poor record keeping and not keeping complainants updated;
- whether listening to a recording was the most efficient and proportionate way to verify what happened during a hearing;
- instances where the OJC missed issues regarding Judges' behaviour, which were hidden in a large volume of material;

- whether the OJC followed its own procedures in concluding that a complaint was not sufficiently particularised; and
- the extent to which the OJC made adequate enquiries to substantiate its findings and the extent to which it kept a record of the outcome of those enquiries.

The OJC, as a matter of routine, reviews the progress of its cases each month; however, there does still appear to be a number of cases in which the OJC's case management has failed. These were usually cases where complainants asked the OJC to consider a large number of complex points, many of which did not raise a question of Judicial misconduct, and which may have related to events that occurred some years ago. The OJC's Senior Management team takes these matters very seriously and it has taken steps to address the problem. In addition, the JACO Office will be more proactive in future in checking with the OJC that recommendations and criticisms emerging from the Ombudsman's reports are acted upon.

Tribunal Presidents¹:

154 complaints were received during 2012/13, compared to 145 last year. 19 were determined, of which 5 were upheld or partially upheld, an increase of 3 on the very low number upheld in 2011/12. Issues included:

- unrealistic expectations that the regulated disciplinary function can consider concerns about judicial decisions or case management;
- time taken to handle complaints, including delays arising when Tribunal Presidents, who are personally responsible for investigating complaints, are absent for any reason;
- problems with the process by which cases that have been deferred are considered once litigation has ceased;
- the position of Tribunal members who hold more than one Judicial Office or who may be assigned to more than one Chamber;
- whether Tribunal Presidents took appropriate steps to verify what happened, including issues regarding Tribunal Members' body language and the manner in which they spoke (as opposed to the words actually used);
- the adequacy and clarity of correspondence; and
- the extent to which Tribunal Presidents can rely on the outcome of an appeal in concluding that complaints about judicial decisions or judicial case management did not raise a question of misconduct.

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

Magistrates' Advisory Committees

The number of complaints about Advisory Committee matters was small. We received 36 complaints during 2012/13, compared to 45 in 2011/12. Last year 5 cases were determined, of which 1 was upheld or partially upheld. The issues requiring investigation included:

- whether an Advisory Committee Chairman considering allegations about the inappropriate use of the JP suffix in a personal dispute considered all the relevant guidance;
- whether to defer an investigation on the basis that the result of another investigation may result in removal from Office;
- whether a Conduct Investigation Panel should proceed with a hearing if the Magistrate complained against cannot attend; and
- the extent to which Advisory Committees can rely on findings from other disciplinary bodies in dismissing a complaint, and the extent to which its enquiries into such matters need to be documented.

The Ombudsman is aware that the number of Advisory Committees involved in determining complaints creates a risk of inconsistency (although he accepts that the recent reduction in the number of Advisory Committees reduces the risk). He is also concerned about the lack of information about the number of complaints made to Advisory Committees, not least because it is impossible to tell whether the low number of complaints made to him reflects a low number of complaints against Magistrates, or a degree of satisfaction about the Advisory Committee investigation process, or some other factor. The JACO Office has agreed to provide input to an Advisory Committee network and to participate in training regarding complaint handling for Advisory Committees. In addition, JACO's Office will liaise with the OJC to ensure that recommendations and criticisms from the Ombudsman's investigations are cascaded to all Advisory Committees.

Complainants and Stakeholders

Our communications

Use of the website www.judicialombudsman.gov.uk is encouraged as a means for finding out about the Ombudsman's role and to access the on-line complaint form.

JACO officials reviewed the JACO communications material during 2012/13, and specifically the website and information leaflets/forms. The team worked very closely with colleagues in the MoJ Communications Directorate, ensuring that the JACO website content conformed with the new MoJ website guidelines whilst retaining essential relevant information about the Ombudsman's remit. The review of the JACO leaflets identified sections that were not essential and where re-design would make savings, without losing key messages and information.

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, the Chairman of the JAC and the Judicial Office. JACO officials met with the Deputy Secretary of the Malaysian Judicial Appointments Commission, and a delegation of Ombudsmen from Pakistan and The Gambia.

The Ombudsman was fully engaged with the recent working party, reviewing the judicial discipline rules and regulations, chaired by Lord Justice Toulson. We expect that the new legislation will come into force in October 2013, resulting in a quicker and simpler complaint investigation process.

Compliments received

Below are some of the comments we have received about cases finalised this year:

- *"Many thanks for the report and I am glad a body like JACO exists."*
- *"I have received the report of the Ombudsman today and wanted to take the opportunity of thanking you both for the work that this has involved. I am saddened that my complaints have not been upheld [...]. In any event, regardless of any outstanding issues I feel I could have, it is time to move forward and put this behind me."*
- *"Thanks a lot for your help. You've been wonderful."*

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 objectives 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 (0.6 full-time equivalent). The office has a very low level of sick absence, an overall average of 2.5 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

There have been no changes in staff during 2012/13. All JACO staff are fully trained to carry out their respective duties and have a high level of complaints investigation experience between them. 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. In 2012/13 JACO staff collaborated with another complaint handling body to undertake a joint training venture to gain a Level 7 BTEC Advanced Professional Award in Complaints Handling and Investigations. All members of the JACO team have now obtained this qualification.

Information Assurance

A key priority continues to be the protection of information that we hold about complainants and those complained about; the team are fully aware of, and responsible for, the safeguarding of this information. All members of staff have completed the mandatory MoJ Fraud and Information Assurance awareness training.

Other Statutory and Departmental Requirements

In accordance with the Memorandum of Understanding between the Ombudsman and 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 endeavour to respond appropriately to requests for information under the Freedom of Information Act 2000 and the Data Protection Act 1998. These requests can be time consuming and have, on occasion, delayed investigations. More staff are now able to respond to these requests and we remain committed to disclosing whatever we can, in line with legislation.

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Annexes

Annex A

2012/13 Statistics

Breakdown of complaints received

	Total number of complaints & enquiries received	Appointment-related cases received	Conduct-related cases received	Other enquiries received
April	61	1	40	20
May	49	1	28	20
June	44	–	26	18
July	51	1	14	36
August	58	–	48	10
September	66	–	38	28
October	92	–	52	40
November	86	–	55	31
December	68	–	35	33
January	87	3	56	28
February	75	2	43	30
March	73	2	47	24
	Number of complaints & enquiries	Appointment related cases	Conduct related cases	Other enquiries received
TOTALS	810	10	482	318

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
482	292	154	36

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	0	0	9
Conduct – relating to OJC	129	89	44
Conduct – relating to Tribunals	82	49	19
Conduct – relating to Advisory Committees	25	6	5
Total	236	144	77

Cases investigated, determined and finalised⁴

	Not upheld	Upheld and partially upheld	Total
Appointment	7 (77%)	2 (28%)	9
Conduct – relating to OJC	27 (61%)	17 (39%)	44
Conduct – relating to Tribunals	14 (74%)	5 (26%)	19
Conduct – relating to Advisory Committees	4 (80%)	1 (20%)	5

² The number of cases received will not correlate with the number of cases finalised as some cases will have been received in the previous year and finalised this year, and similarly ongoing cases as at 31/3/13 have been carried into the next year, and will be finalised in the next year.

³ Of cases received in 2012/13, 73 required a 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 the Case Studies is to provide a brief summary of the type of complaints that the Ombudsman receives, and to illustrate his approach in determining whether there was maladministration. These are extracts from finalised investigations, and highlight only the point of interest; they 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 study

Case study one – Judicial Appointments Commission

This complaint was about the JAC's Reasonable Adjustment Policy, which requires the JAC to consider making reasonable adjustments to physical premises or working practices to remove barriers that would otherwise prevent disabled people, or those who suffer from a temporary condition, from participating fairly in the selection process. It was clear from my investigations that some applicants have an unreasonable expectation about who might be entitled to assistance under the policy and the type of adjustments possible.

The Applicant in this case had suffered from a short term debilitating medical illness just before Selection Day and had sent the JAC a letter from a specialist stating that he would make a good recovery, but for a few weeks would suffer from tiredness and fatigue, and would have "word finding" difficulties. He was not successful at the JAC Selection Day and the feedback he received said that he suffered from difficulties developing arguments or examples which, he argued, was a description of someone suffering from the condition trying to do their best. He complained that the JAC had failed to make any adjustments and that he had suffered a disadvantage because of his medical condition. He claimed that the decision to reject his application was not consistent with the principle of selection on merit.

Although the Reasonable Adjustment Policy does not allow the JAC to enhance marks, the Selection Panel acted appropriately in checking, at the start of the interview, whether the candidate was in a position to continue, and whether he needed any adjustments to do so. The candidate assured the panel that he was OK to continue and that there was nothing he required by way of a reasonable adjustment. However, I concluded that the JAC should have been more proactive in explaining the Reasonable Adjustments Policy in advance of the selection day, and discussing what help might be available to the candidate.

Conduct case studies

Case study two – Office for Judicial Complaints

This case illustrates some of the difficulties that the OJC faces when conducting proportionate investigations within an appropriate time scale.

The complaint followed a case in which the Court considered applications by both the complainant and his neighbour for injunctions against each other for anti-social behaviour. The hearing took place over four days. The complainant contacted the OJC in April 2011, expressing concern that the Judge had been aggressive and intimidating, had threatened imprisonment and been prejudiced against his lifestyle. The OJC finally dismissed the complaint in November 2011, after the Judge had retired. The complainant expressed concern that the OJC had dismissed aspects of his complaint without investigation; had not listened to the recordings of the hearing; and had needlessly “strung out” its investigation.

The complainant was concerned about events leading up to the trial as well as the Judge’s comments and conclusions. However, the OJC cannot review the issues in a trial and I was content, given the nature of the allegations and the points at issue in the trial, that the OJC followed an appropriate process in dismissing many aspects of the complaint on the basis that they were about judicial decisions or judicial case management, and did not raise a question of misconduct.

The OJC’s investigation process needs to be proportionate and in this case it was unnecessary for the OJC to have listened to the entire hearing, which was recorded on twenty tapes. The complainant had only said that the Judge was aggressive and intimidating on one day of the trial and had suggested that the Judge had acted in this manner throughout the day. The OJC therefore concentrated on the day in question and found no evidence of the Judge acting in an aggressive and intimidating manner from listening to one tape. It was reasonable for the OJC to have concluded, from this evidence, that the complaint was unfounded and it would have been disproportionate for me to have required the OJC to listen to more recordings.

It took longer than it should have done for the OJC to consider this complaint. However, the OJC explained its remit at the start of the investigation and subsequently had to deal with lengthy correspondence and a number of difficult telephone calls in which the complainant raised matters unrelated to the Judge’s conduct. There also appeared to have been genuine concerns about the complainant’s psychological well being. These extraneous matters took the caseworker away from the investigation and caused much of the delay. I was pleased to pass on the OJC’s apologies for the time taken but I did not find any maladministration in the way the investigation was managed or any evidence that the OJC had needlessly strung out its investigation. The complainant has to accept that his actions were a significant contributory factor.

Case study three – Office for Judicial Complaints

I have investigated a number of cases this year in which people have expressed concern about the OJC's actions in dismissing complaints as "insufficiently particularised".

In this case the OJC was asked to consider a complaint that the Judge had shouted at a litigant in person and would not allow him to present his case. The OJC followed the appropriate guidance when it dismissed aspects of the complaint on the basis that they were about judicial decisions or judicial case management and did not raise a question of misconduct; it also acted appropriately when it asked the complainant to provide more information about the allegation that the Judge had shouted. However, I found that the OJC had failed to follow the appropriate process when it subsequently rejected the complaint on the basis that the concerns were insufficiently particularised and that the transcript, which the complainant had provided, did not support the allegation.

The OJC has no published standards to follow in deciding whether a complaint has been sufficiently particularised. It has previously told my Office that the question it considers in this regard is whether it can identify matters for investigation. This includes being able to identify the Judge and hearing concerned and how the Judge's personal conduct was believed to be at fault. The OJC has cited an example that if someone alleges that a Judge has been rude then it would need to know how the Judge has been rude, what the Judge said or did or the tone of their voice, and that it would not be sufficient just to say that the Judge had been rude throughout the hearing without providing specific examples. That is reasonable.

However, in this case the Judge was alleged to have shouted and the complainant had provided information to identify the point at the hearing when this took place. I found that it was not clear how the OJC reached the conclusion that the transcript did not support the conclusion that the Judge had shouted, as transcripts only record the words that were said and not the tone, volume and manner. The OJC had failed to take appropriate steps to verify whether or not the way the Judge dealt with the complainant raised a conduct issue. This amounted to maladministration and I upheld the complaint on that basis.

Case study four – Tribunal President

This case concerns the process by which a Tribunal Investigating Judge considered a complaint made against two Tribunal Judges in 2009. The Investigating Judge advised the complainant in February 2010 that it was inappropriate to respond to the complaint until the case, which was the subject of an appeal, had been resolved. The appeal was rejected and the complaint was finally dismissed in May 2012, after the complainant had written to the Investigating Judge for an update.

The complainant's concerns were wide-ranging, including matters that related to judicial decisions and judicial case management, and which were rejected at the appeal. The complainant also alleged that the Tribunal Judge who conducted Case Management Discussions had been rude. This related to the fact that the judge had spoken to the Respondent's Counsel rather than to the complainant, and did not concern either what the Judge had said or their tone of voice. The Investigating Judge concluded that these matters related to judicial decisions or judicial case management, and did not raise a question of misconduct. This was reasonable and consistent with guidance.

The complainant was also aggrieved to have been told in May 2012 that the length of time that had passed since the original hearings made it impossible to investigate their complaint. I gave careful consideration to this aspect of the complaint, considering the reasons for both the time taken and the handling of the allegations. I did not make a finding of maladministration as:

- it was appropriate for the Investigating Judge to decline to provide a substantive response whilst an appeal was pending;
- the case was closed incorrectly and the Investigating Judge did not re-open it when litigation was concluded. However, this was a single error rather than maladministration and the Investigating Judge acted swiftly to rectify this mistake when the complainant brought it to his attention; and
- many of the allegations related to judicial decisions or judicial case management, as set out in guidance, whilst others related to the Judge's facial expressions. The Investigating Judge highlighted the difficulties of verifying such matters three years after a hearing and decided that these could not warrant a disciplinary sanction. It would have been preferable if this had been explained to the complainant. However, this did not amount to maladministration.

Case study five – Magistrates’ Advisory Committee

This case concerns an Advisory Committee (AC) Chairman, who had allegedly failed to adequately consider a complaint in which there was evidence that a Magistrate had acted dishonestly, and had also relied on the complainant’s illness to dismiss the matter.

The Magistrate sat on a professional panel, and had been himself the subject of a disciplinary investigation. The complainant heard about this and contacted the Advisory Committee to raise questions about the Magistrate’s honesty and whether he should remain a Magistrate. The Advisory Committee asked the complainant to provide further information and the Chairman dismissed the complaint as insufficiently particularised when the complainant did not do so. The Chairman agreed to look at the matter again when the complainant explained four months later that illness had prevented him from responding to the original request for information.

I did not find that the Chairman had relied on the complainant’s illness to dismiss the complaint:

- it was appropriate for the Advisory Committee to seek further information from the complainant and to dismiss the complaint as insufficiently particularised. This is consistent with legislation;
- it was reasonable, when the Chairman considered evidence four months later, for him to have taken account of the length of time that it had taken the complainant to provide the information. The complainant had not previously provided any indication of the difficulties he was facing nor had he asked for more time; and
- the Chairman’s final decision was also based on his assessment that the totality of the evidence would not warrant a disciplinary sanction. The professional body had investigated the matter and had not taken any disciplinary action against the Magistrate.

The evidence available to the Chairman included a transcript of the professional body hearing. This recorded that the Magistrate had admitted acting in the way alleged, and it would have been open to the Chairman to have referred the matter to a Conduct hearing to consider this evidence. However, as the concerns arose from the Magistrate’s participation in a professional body hearing, it was reasonable for the Chairman to take account of the professional body’s findings in deciding whether a disciplinary sanction might be appropriate. The Advisory Committee followed an appropriate process and made appropriate enquiries.

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 (97%)
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 (98%)
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 (95%)
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 (99%)

<p>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.</p>	
<p>Our Key Performance Indicators are:-</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 2013.</p>	<p>All Achieved</p>
<p>Our third business objective is to deliver our business in the most cost effective and efficient manner, and to operate efficiently.</p>	
<p>Our Key Performance Indicators are:-</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

	Forecast	Actual
Staff costs and salaries	520,000	521,000
Office expenditure, Accommodation and IT Services	12,000	8,000
Service costs and Miscellaneous	6,000	5,000
Training	10,000	11,000
Travel and subsistence	1,000	1,000
Total expenditure	£549,000*	£546,000

* The original forecast was revised midway through the year from £533,000. This was an accounting adjustment restoring some of the funds previously removed from the forecast in 2011/12.

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	2012/13
Cases received		304	314	278	379	470	645	810
Cases determined		37	101	103	70	67	73	77
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	14 upheld or partial 54 not upheld	23 upheld or partial 45 not upheld
Appointments (JAC)		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	2 upheld or partial 3 not upheld	2 upheld or partial 7 not upheld
Ombudsman's Time (Days per week)		2	3	3.5	3.5	2.5	2.5	3
Staff Resources (excl Ombudsman) (Headcount)		9	10	10	10	10	10 (9.4 FTE)	10 (9.4 FTE)
Budget	Forecast	606,563	609,705	596,500	600,000	591,000	534,000	549,000
	Actual spend	475,392	494,894	564,708	584,928	539,428	457,000	546,000



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