



Judicial Conduct  
Investigations Office

JCIO Annual Report

**2022-2023**



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# Foreword

I am pleased to introduce the 2022-23 annual report of the Judicial Conduct Investigations Office (JCIO). We are the statutory body that supports the Lord Chancellor and the Lady Chief Justice in their joint responsibility for judicial discipline. We are part of the Judicial Office, an arms-length body of the Ministry of Justice, and we are operationally independent. This is my fourth report as head of the JCIO.

This report covers a period of time before The Right Honourable the Baroness Carr of Walton-on-the-Hill became Lady Chief Justice in October 2023. For brevity and clarity, the term “Lord Chief Justice” is used in general, past-tense, references to the office because this is the term which appears in the relevant legislation. “Lord Chief Justice” is also used when referring to actions or decisions taken by the former Lord Chief Justice, the Right Honourable the Lord Burnett of Maldon. The title “Lady Chief Justice” is used when making present-tense references to the office, as well as when referring to actions already taken, or to be taken in future, by Baroness Carr in her role as head of the judiciary.

The purpose of the judicial disciplinary system is formally defined as:

*To ensure that allegations of misconduct are dealt with efficiently, fairly and proportionately, and that public confidence in the independence, integrity and good standing of the judiciary is thereby maintained.*

The JCIO deals with complaints of misconduct against salaried and fee paid courts and tribunal judges, non-legal tribunal members, and coroners. We also have an advisory role in the process for considering complaints about magistrates. Section one of this report gives an overview of how the disciplinary system works and the JCIO’s role in it.

The JCIO has three published performance targets for dealing with complaints. I am pleased to say that, thanks to the team’s dedication and hard work, we met or exceeded all three of those targets in 2022-23. Section two contains more information about the JCIO’s performance.

In 2022-23, we received 1,620 complaints, compared to 1,817 in 2021-22. Section three contains more information about the complaints we received.

As in previous years, we were unable to accept a substantial proportion of complaints (41%) because they were about issues outside the JCIO’s remit such as judicial decisions, which can only be challenged on appeal to a higher court. A further 46% of complaints were dismissed for a range of reasons, including, for example, that they were found to be misconceived. Section four contains more information about the outcome of complaints.

There was a small increase in the number of upheld complaints. The Lord Chancellor and the Lord Chief Justice (or his senior judicial delegate) issued 36 disciplinary sanctions, compared to 33 in 2021-22. However, with around 20,000 judicial office-holders in post, misconduct remains rare. Section five contains more information about complaints which resulted in a disciplinary sanction.

In last year’s annual report, I mentioned that, following a public consultation on a range of proposed improvements to the judicial disciplinary system, we had moved into the implementation phase of the work. We reached a major milestone in October this year with publication of new rules and statutory regulations which govern how complaints to the JCIO

are handled. New rules for how regional conduct advisory committees handle complaints about magistrates were published at the same time. The new rules, regulations and associated guidance are available to view on our website.

A key theme of changes resulting from the review is greater transparency. Last year, we introduced a number of measures to promote transparency, including:

- More detailed statements about cases which result in a disciplinary sanction (disciplinary statements), with longer publication periods;
- The ability for anyone to request a copy of a deleted disciplinary statement;
- A more detailed annual report.

Another measure we have started to work on is developing more detailed and descriptive complaint categories. This is to give the public and the judiciary a clearer picture of the types of complaints we receive and their outcomes. We will start reporting on these more detailed categories in next year's annual report (2023-24). We have also started to develop the process by which we gather, analyse, and report on the diversity profile of complainants and office-holders who are subject to complaints. Our aim is to start reporting on these additional data for the year 2024-25.

In October, responsibility for dealing with complaints about tribunal judges and non-legal members passed from chamber presidents (the senior leadership judge of each tribunal) to the JCIO. As well as aiding consistency in how complaints are handled, this will enable chamber presidents to spend more time on their other responsibilities. In preparation for the extra work that this change will entail for the JCIO, we have recruited more staff. At the time of publication, we have a complement of 20 staff.

My priorities for the JCIO remain to: deal with complaints efficiently, while providing a high-quality service to complainants and the subjects of complaints; continue to promote transparency and raise awareness of our work; and to ensure that implementation of changes resulting from the review of the disciplinary system, which are now nearing completion, continues according to plan.

As ever, I would like to thank my team at the JCIO for their hard work and professionalism. I would also like to acknowledge the important contribution made by nominated judges, investigating judges, chamber presidents, regional conduct advisory committees and the judicial and lay members of disciplinary panels. All continue to play an important part in ensuring that complaints are dealt with fairly, thoroughly, and effectively.

**Amy Shaw**

Head of the Judicial Conduct Investigations Office

# 1. The judicial disciplinary system

## Background

Prior to the Constitutional Reform Act 2005 (“CRA”), the Lord Chancellor was, as head of the judiciary, responsible for judicial discipline. Civil servants in the Lord Chancellor’s Department, which later became the Department for Constitutional Affairs, and which is now the Ministry of Justice, were responsible for handling complaints about the judiciary and for supporting the Lord Chancellor in his disciplinary role. The process for handling complaints was not based in statute.

One of the significant constitutional changes brought about by the CRA was to pass the role of head of the judiciary to the Lord Chief Justice. Thereafter, responsibility for judicial discipline has rested jointly and equally with the Lord Chancellor and the Lord Chief Justice.

In 2006, the Office for Judicial Complaints (“OJC”) was established. The OJC was responsible to both the Lord Chancellor and the Lord Chief Justice.

Another significant change arising from the CRA was to put the process for handling complaints on a statutory footing. The first set of disciplinary regulations, also known as “prescribed procedures”, derived from the CRA was introduced in 2006.

In 2011, following a review of arms-length bodies by the Ministry of Justice, the OJC became part of the Judicial Office, which had been set up in 2006 to support the then Lord Chief Justice with his new responsibilities as head of the judiciary. The OJC operated independently and continued to support both the Lord Chancellor and the Lord Chief Justice in their joint responsibility for judicial discipline.

In 2013, following a comprehensive review of the process for dealing with complaints about the judiciary, led by the late Lord (then Lord Justice) Toulson, new disciplinary regulations were introduced: *The Judicial Discipline (Prescribed Procedures) Regulations 2014*, along with three sets of supporting rules.

In addition to making various changes to the process for handling complaints, the new disciplinary regulations saw the OJC replaced by the JCIO. Like its predecessor, the JCIO is based in the Judicial Office but operates independently of the rest of the Judicial Office and the Ministry of Justice in supporting the Lord Chancellor and the Lord Chief Justice on disciplinary matters.

## Standards of conduct

The standards of conduct judicial office-holders are expected to maintain are set down principally in the *Guide to Judicial Conduct*.<sup>1</sup> The guide was first published in 2003, a result of extensive work by a Judges’ Council working group.

There are three basic principles guiding judicial conduct: judicial independence, impartiality, and integrity. These are a distillation of the six fundamental values set out in the *Bangalore Principles of Judicial Conduct*.

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<sup>1</sup> <https://www.judiciary.uk/publications/guide-to-judicial-conduct/>

The Guide has undergone regular revisions since 2003 to reflect changes that have occurred in wider aspects of judicial and public life.

## The judicial disciplinary system today

In late 2019, the JCIO suggested to the Lord Chancellor and the Lord Chief Justice that the time was right to review the operation of the disciplinary system. They agreed. Throughout 2020, an independent judge-led working group conducted a comprehensive review of the system. The working group's remit was:

*'To review the judicial disciplinary system in England and Wales, and to make recommendations to ensure that the consideration of complaints about misconduct is proportionate, efficient, fair and strikes the right balance between confidentiality and transparency.'*

In late 2021, a public consultation was launched on a range of proposals for improvements to the system. On 8 August 2022, the Lord Chancellor and the Lord Chief Justice published their response to the consultation, which set out 40 proposals which they agreed to adopt for implementation.

In October 2023, to enable the changes to be implemented, a new set of regulations replacing the earlier 2014 version was published: *The Judicial Discipline (Prescribed Procedures) Regulations 2023*.

In addition, two sets of supporting rules were published to replace the earlier three sets of rules:

- *The Judicial Conduct (Judicial and other office holders) Rules 2023* which govern the consideration of complaints about salaried and fee paid courts judges, tribunal judges and non-legal members and coroners. Complaints are made to the Judicial Conduct Investigations Office ("JCIO").
- *The Judicial Conduct (Magistrates) Rules 2023* govern the consideration of complaints about magistrates. Complaints are made to one of seven regional conduct advisory committees.

The changes to the new rules and regulations have allowed for the transfer of responsibility for dealing with complaints about tribunal judges and non-legal members from chamber presidents to the JCIO. This will reduce the burden of work on chamber presidents, eliminate the risk of conflicts arising between their pastoral and disciplinary roles, and promote a more consistent approach to dealing with complaints.

The process for dealing with complaints about magistrates has been aligned with the JCIO process, whilst retaining the valuable role of conduct advisory committees in considering complaints, making it more proportionate and efficient.

The JCIO has worked closely with key interests whose work is affected to ensure that the changes have been carefully managed. Other changes following the review have included:

- Providing the public and the judiciary with more information about the disciplinary system, including publishing more information about disciplinary decisions;

- Issuing a new publication policy to give effect to the decisions of the Lord Chancellor and the Lord Chief Justice that disciplinary statements should be more detailed, should remain on the JCIO website for longer periods proportionate to the seriousness of the misconduct, and to make copies of deleted statements available from the JCIO on request;
- Measures to promote diversity amongst the judicial office-holders and lay people who carry out roles in the system including expanding the pool of nominated judges to include (in addition to High Court and Court of Appeal judges), district judges, circuit judges, salaried tribunal judges and coroners; introducing diversity training for the judicial office-holders and lay people who carry out roles in the system; and also encouraging more judicial office-holders and lay people from underrepresented groups to apply for roles in the system.

## Judicial independence

The principle of judicial independence is a fundamental feature of our democratic society. It means that judicial office-holders must exercise their powers impartially and must be free to do so without interference from external sources, including the government and civil servants.

It is for this reason that the judicial disciplinary system is for complaints about the personal conduct of members of the judiciary. The system cannot be used to seek to interfere in the exercise of independent judicial discretion or to overturn judicial decisions. Such matters can only be challenged through the courts.

## Misconduct

Misconduct is a term which refers to improper personal conduct by a judicial office-holder that is serious enough to call for formal disciplinary action. Examples of misconduct may include:

- Bullying or harassment, for example of staff, colleagues, litigants, or legal representatives;
- Using racist, sexist, or otherwise offensive language;
- Loss of temper/rudeness/aggression, for example shouting;
- Misusing judicial status, for example to try to influence another person or organisation for personal gain;
- Misusing social media, for example posting offensive content, or content which could damage public confidence in judicial impartiality such as remarks about government policy;
- Failure to report personal involvement in civil, criminal, or professional disciplinary proceedings;
- Delay in issuing a judgment or order (usually considered to be a delay, without a reasonable excuse, of more than three months);
- Falling asleep in court.

In November 2023 a change, arising from the review of the disciplinary system, to promote public understanding of the link between misconduct and different levels of disciplinary sanction was introduced - the classification of misconduct by levels of seriousness:

- Misconduct
- Serious misconduct
- Gross misconduct

This change will now be incorporated in the decision-making process for any case in which the investigation of a complaint results in a finding of misconduct and a disciplinary sanction.

## The power to take disciplinary action

Another important feature of the system, which again reflects judicial independence, is that disciplinary powers are vested jointly in the Lord Chancellor and the Lady Chief Justice.

Sanctions below removal from office are issued by the Lady Chief Justice with the agreement of the Lord Chancellor. They are set out in the CRA and are, in order of severity: formal advice, formal warning, and reprimand. Suspension is also available as a sanction in limited circumstances. The power to remove a judicial office-holder from office, which resides in various pieces of legislation, rests with the Lord Chancellor and requires the agreement of the Lady Chief Justice.

The only exception to this is High Court Judges who can only be removed by the Monarch upon an address to both Houses of Parliament.

A new sanction for misconduct will also be introduced in future: a period of suspension (without pay for salaried judicial office-holders). This will give the Lord Chancellor and the Lady Chief Justice a wider range of options for dealing with the most serious cases of misconduct. This will require a change to the primary legislation. We estimate that it will take approximately a year before this change can be implemented.

In relation to tribunal members, the Senior President of Tribunals holds delegated authority from the Lady Chief Justice to consider cases and issue sanctions up to and including a reprimand. In relation to magistrates, the Lady Chief Justice has delegated her powers to consider cases and issue sanctions up to and including a reprimand to Mr Justice Keehan.

In cases involving judges assigned to the small number of tribunals with a UK-wide jurisdiction, the Lady Chief Justice's role in the disciplinary process is performed by the Lord President and the Lady Chief Justice of Northern Ireland, if the office-holder sits mostly or solely in one of those jurisdictions.

In all cases, disciplinary action may only be taken after the relevant rules and regulations have been complied with.

## Judicial Conduct Investigations Office ("JCIO")

The status and role of the JCIO is set out in the 2023 disciplinary regulations. The process the JCIO follows in considering complaints is set out in *The Judicial Conduct Rules 2023* ("the rules").<sup>2</sup>

While the JCIO can reject or dismiss a complaint and can give advice to the Lord Chancellor and the Lady Chief Justice on issues such as the level of disciplinary sanction recommended to them in a case, it has no powers to make findings of misconduct or to discipline an office-holder.

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<sup>2</sup> The statistics in this report refer to the 2014 rules as these were in force during the reporting period.

In recent years, the JCIO has received between 1,200 and 1,800 complaints a year. However, it is typically obliged to reject between 40%-60% of them because they are about issues which fall outside its remit, such as judicial decisions, or because they fall outside the three-month time limit for making a complaint.

A further 30%-50% of complaints have been dismissed, either straightaway or after making provisional enquiries, because they were, for example, found to be about judicial case management and did not raise a question of misconduct.

The process by which the JCIO establishes whether a complaint raises a question of misconduct is detailed in the rules. For complaints that it is not obliged to reject or dismiss straightaway, the steps taken may include listening to the recording of a hearing, obtaining comments from third parties such as court staff or legal professionals, and obtaining comments from the office-holder who is the subject of the complaint.

## Judicial and lay involvement in the disciplinary process

Independent judicial and lay involvement in the form of nominated judges, investigating judges, disciplinary panels, and nominated committee members, is a key part of the system. It is these authorities who will make findings of misconduct and recommend disciplinary sanctions.

A complaint which the JCIO has not rejected or dismissed must be dealt with under the *summary process*, the *expedited process* (see both below), or otherwise must be referred to a nominated judge.

Nominated judges consider complaints to decide whether misconduct has occurred and, if so, recommend a sanction. Approximately 20–30 cases per year are referred to a nominated judge.

The Lady Chief Justice selects nominated judges following an expressions of interest exercise. The number of nominated judges at any given time is based on having the ability to deal with complaints promptly while giving each nominated judge regular experience of the work. During the reporting period for this report, there were six nominated judges, three from the Court of Appeal and three High Court judges. The Lady Chief Justice has recently appointed a further twelve nominated judges, widening the pool to include circuit judges, district judges, salaried tribunal judges, and coroners.

Cases which are especially serious, or complex, may also be referred to an investigating judge. They are appointed on a case-by-case basis to consider complaints which need more in-depth enquiry to decide whether misconduct has occurred and, if so, recommend an appropriate sanction to the Lord Chancellor and the Lady Chief Justice. There are typically fewer than five such cases a year. In this reporting year, two judicial investigations have been initiated.

Additionally, disciplinary panels, composed of one judicial and two lay members, consider cases in which an office-holder has been recommended for suspension or removal from office to decide whether misconduct has occurred and, if so, to recommend a sanction.

Complaints against magistrates will come to the JCIO only after consideration by a nominated committee member (a role analogous to nominated judge) of the relevant conduct advisory committee or as a result of a recommendation under the summary process. If the nominated committee member makes a finding of misconduct and, therefore, recommends a sanction, the case will be referred, via the JCIO, to the Lord Chancellor and the Lady Chief Justice for a final decision.

## Summary process

The *summary process* is a process designed to deal with cases in which removal from office is recommended without a requirement for further investigation. Examples include conviction for a serious criminal offence and persistent failure, without a reasonable excuse, to meet sitting requirements.

## Expedited process

The *expedited process* is an opt-in process which is designed to deal swiftly with cases in which there is no dispute as to the facts and where the sanction for misconduct will be at the lower end of the scale of seriousness.

If a judicial office-holder agrees to the use of the process, the JCIO will send the case, along with any representations from the office-holder, directly to the Lord Chancellor and the Lady Chief Justice for their decision.

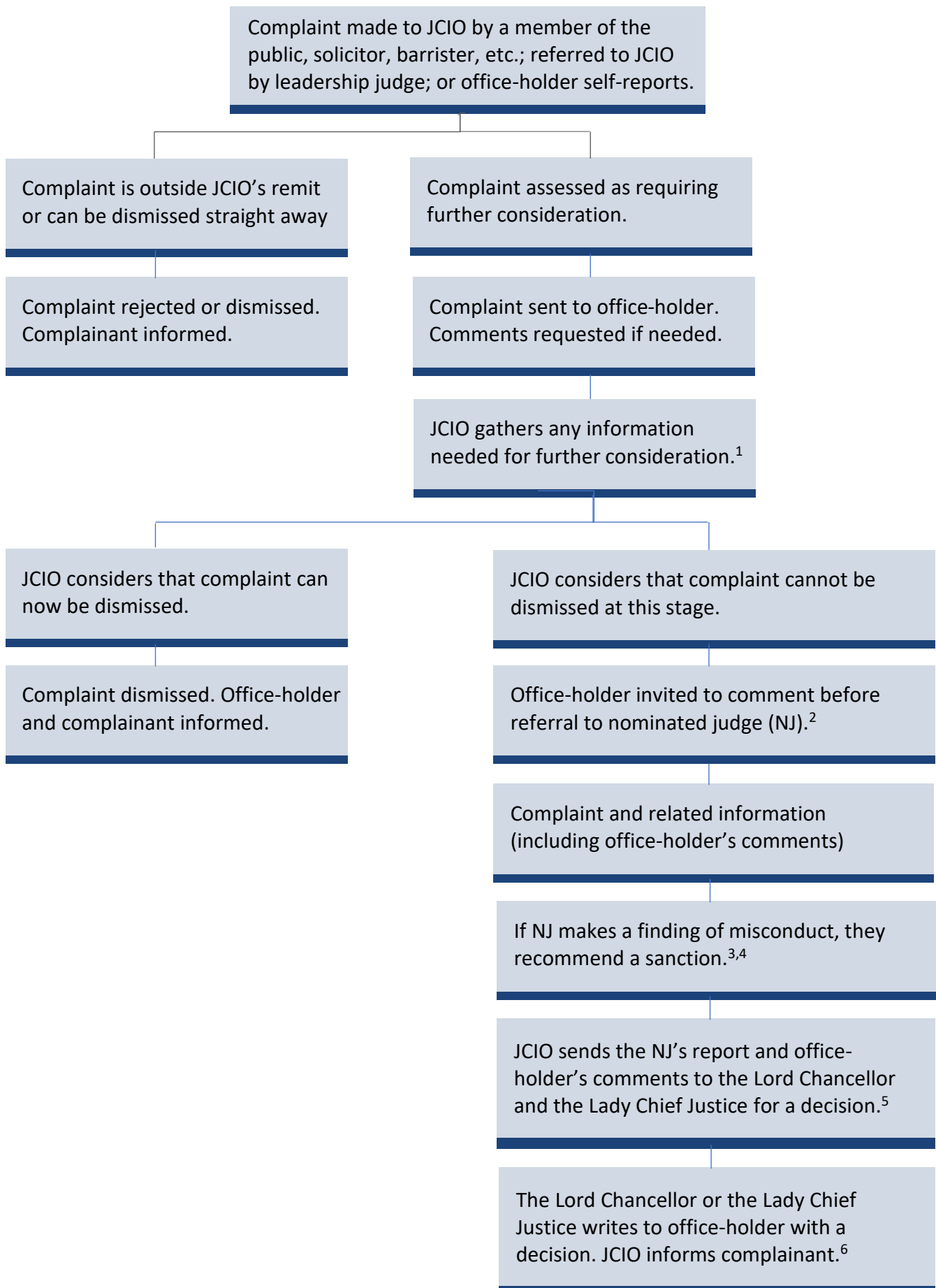
## Final decision

Following consideration of a case by a nominated judge, investigating judge, disciplinary panel, or a nominated committee member (for magistrates cases), the JCIO refers the case to the Lord Chancellor and the Lady Chief Justice (or her senior judicial delegate) for a final decision. By convention, the Lady Chief Justice considers the case first followed by the Lord Chancellor.

Once a decision has been made, the parties are informed in writing. To promote transparency, in cases which result in a disciplinary sanction, the JCIO publishes a statement about the decision on its website.

### Fig. 1 Judicial disciplinary process flowchart

The flowchart on the following page gives an overview of the process the JCIO follows in considering complaints.



## Notes

1. As well as asking for an office-holder's comments, the JCIO can gather information from other sources, e.g. listening to a hearing recording & obtaining comments from third parties such as court officials, solicitors and barristers.
2. Nominated judges are appointed by the Lady Chief Justice to consider complaints and include a wide range of judicial office-holders including circuit judges, district judges, senior court judges, salaried tribunal judges, and coroners.
3. Nominated judges can dismiss a complaint where they find no misconduct, refer a complaint to an investigating judge, deal with a complaint informally, or find misconduct and recommend disciplinary action.
4. In the rare cases where removal from office is recommended, office-holders can elect to have the complaint considered by a disciplinary panel composed of judiciary and lay persons appointed by the Lord Chancellor.
5. The Lord Chancellor and the Lady Chief Justice can agree to dismiss a complaint where they find no misconduct. They can also refer a complaint to a disciplinary panel or investigating judge, deal with it informally, or, where they find misconduct, issue a sanction (options are formal advice, formal warning, reprimand or removal).
6. In cases where the Lord Chancellor and the Lady Chief Justice sanction an office-holder, they agree a short statement which is published on the JCIO's website. Information about the publication periods for these statements is contained in Annex 1.

## 2. Our performance

We use key performance indicators (“KPIs”) to monitor and report on our performance, and to ensure that we provide a high-quality service.

The table below shows our performance against our three KPIs during the 2022-23 reporting year:

Action	Target	Performance 21-22	Performance 22-23
1. Notify complainants within two weeks of receipt if a complaint falls outside our remit.	<b>90%</b>	<b>97%</b>	<b>97%</b>
2. Conclude complaints accepted for further consideration, including those which proceed to full investigation, within 20 weeks of receipt.	<b>85%</b>	<b>93%</b>	<b>85%</b>
3. Provide monthly updates to parties in ongoing investigations.	<b>95%</b>	<b>98%</b>	<b>95%</b>

### Staffing

The JCIO currently has a staffing complement of 20. During this reporting year, we operated with an average of three vacant posts. Although we do not struggle to attract applicants for vacancies, it can take some time for the recruitment process and related security checks to be completed.

### Finance

The JCIO’s budget requirements are relatively small. It is not required to produce its own accounts because its expenditure forms part of the Judicial Office’s resource accounts, which are subject to audit. The JCIO manages its public funding responsibly and adheres to the same financial governance requirements as the Judicial Office.

### 3. Complaints to the JCIO

The table below contains a breakdown of the complaints which we received in the reporting year:

Category	Receipts	% of Receipts* <small>*rounded to nearest integer</small>
Judicial decision/case management	1,093	67
Inappropriate behaviour/comments	437	27
Judicial delay	44	3
Conflict of Interest	6	-
Failure to meet sitting requirements	10	1
Criminal convictions	1	-
Motoring Offences	4	-
Misuse of Judicial Status	10	1
Civil proceedings	0	-
Financial fraud	4	-
Complaints about non judicial office holders	11	1
	<b>1,620</b>	

As in previous years, the majority of the complaints which we received were not about misconduct but rather about judicial office-holders' decisions or how they managed cases. We are obliged by the rules which govern how we operate to reject or dismiss such complaints.

Examples of complaints about judicial decisions or case management include allegations that a judicial office-holder:

- was biased in their decision-making;
- managed a hearing unfairly, for example by allowing one party to speak for longer than another;
- refused to allow a witness to give evidence or refused to admit certain documents;
- commented that they did not believe a person's evidence, questioned a person's credibility, or criticised a person's actions (all of which judicial office-holders are entitled to do as part of their independent judicial discretion).

When responding to such complaints, we explain why we cannot deal with them and, where possible, suggest the proper route for the complainant to follow. If, for example, a complaint is about a judicial office-holder's decision, we explain that such decisions can only be challenged through the courts and that the complainant may wish to consider seeking independent advice from a solicitor, law centre or Citizens Advice.

The second most common type of complaints which we received were about inappropriate behaviour of some form. Examples of this type of complaint might include that a judicial office-holder:

- used racist, sexist, or otherwise improper language;
- was rude;
- misused social media;
- fell asleep in court.

Where a complaint is not rejected for being outside of our remit, we accept it for further consideration.

### **Planned changes to complaint categories**

In the spirit of transparency, we are developing more informative complaint categories for use in future annual reports. In particular, given the wide variety of complaints that have, to date, been captured under the 'inappropriate behaviour' category, we will introduce new categories which are more specific about the types of behaviour concerned. As we will need a full year of data to report on, we intend to include the first set of more detailed criteria in our 2023-24 annual report. The categories are still being finalised but we expect them to include:

- Displaying anger or aggression;
- Bullying and/or harassment;
- Rudeness;
- Conduct liable to call into question judicial impartiality;
- Dishonesty;
- Failure to engage with, or report a relevant matter to, a senior judicial officer;
- Failure, without a reasonable excuse, to meet sitting or training requirements;
- Delay, without a reasonable excuse, in issuing a decision or approving a hearing transcript;
- Judicial decision/case management;
- Misuse of judicial status;
- Motoring-related conviction;
- Conviction for other types of offence (or acceptance of a caution in some circumstances);
- Subject to serious criticism in a personal capacity in legal or professional disciplinary proceedings;
- Bankruptcy;
- Breach of guidelines about contact with the media;
- Failure to follow guidance about use of social media;

- 
- Improper handling, or accessing, of sensitive information;
  - Falling asleep in court;
  - Other.

## 4. Complaint outcomes

The table below shows the breakdown of complaint outcomes in 2022-23. As previously mentioned, the rules and figures contained in this section and section 5 refer to the *Judicial Conduct (Judicial and other office holders) Rules 2014*.

Not accepted for investigation	
Rule 8 (Does not meet the criteria for a complaint to JCIO)	658
Rule 12 (Complaint is out of time)	95
Complaint was withdrawn	4
<b>Total</b>	<b>757</b>
Dismissed	
Rule 21(a): Inadequately particularised	114
Rule 21(b): about a judicial decision or judicial case management, and raises no question of misconduct	390
Rule 21(c): action complained of was not done or caused to be done by a person holding an office	22
Rule 21(d): vexatious	0
Rule 21(e): without substance	9
Rule 21(f): even if true, it would not require disciplinary action	53
Rule 21(g): untrue, mistaken or misconceived	128
Rule 21(h): raises a matter which has already been dealt with	5
Rule 21(i): about a person who no longer holds an office	12
Rule 21(j): about the private life of a person holding an office and could not reasonably be considered to affect their suitability to hold office	3
Rule 21(k): about professional conduct in a non-judicial capacity of a person holding an office and could not reasonably be considered to affect suitability to hold office	3
Rule 21(l): for any other reason it does not relate to misconduct	3
Rule 41(b): dismissed by a nominated judge	2
Judicial office-holder ceased to hold office before complaint was decided	3
Not upheld by the Lord Chancellor and the Lord Chief Justice (or his senior judicial delegate)	1
<b>Total</b>	<b>748</b>
<b>Upheld</b>	<b>36</b>
<b>Total</b>	<b>1,541</b>

Complaints rejected under rule 8 are those falling outside the JCIO's remit such as complaints about the outcome of a case.

Under rule 12, the JCIO must reject complaints which are not made within three months of the latest event or matter complained of. Before a complaint can be rejected as out of time, the complainant must be given the opportunity to provide reasons for the delay. If these reasons are considered exceptional, the JCIO can accept the complaint.

Rule 21 determines the circumstances in which the JCIO must dismiss a complaint.

Complaints are dismissed under rule 21(a) if they are not detailed enough to be considered properly, for example, where a complainant alleges that a judicial office-holder was rude without providing any details of what they said or did. Before a complaint can be dismissed under this rule, the complainants must be given the opportunity to provide the necessary details.

Most complaints which are dismissed come under Rule 21(b). These are complaints about judicial decisions or case management, and which do not raise a question of misconduct.

Complaints are dismissed under Rule 21(f) if the conduct complained about would not be serious enough for a disciplinary sanction, for example, a complaint that a judicial office-holder frowned when the complainant was speaking.

Complaints are dismissed under Rule 21(g) if they are untrue, mistaken, or misconceived. A complaint will be dismissed under this rule if, for example, the recording of a hearing in which it is alleged that a judicial office-holder shouted at the complainant shows that the judicial office-holder was not shouting but was using a firm tone of voice to keep a hearing on track, which they are entitled to do.

### **Updating the criteria for accepting and dismissing a complaint**

As a result of the review of the disciplinary system, the criteria for accepting and dismissing complaints have been updated in the new *Judicial Conduct Rules 2023* to make them clearer and more straightforward. This should aid complainants and the subjects of complaints in understanding why the JCIO is obliged to reject or dismiss a complaint or part of a complaint. Under the new criteria, in order for a complaint to be accepted for consideration by the JCIO, it must comply with the following requirements, as set out under rule 8 of the 2023 Rules:

- (a) State the name of the person making the complaint;
- (b) State the address or email address of the person making the complaint;
- (c) Contain an allegation of misconduct on the part of an identified or identifiable person holding an office, which is supported by relevant details as specified in guidance published by the JCIO from time to time;
- (d) State the date, or dates, that the alleged misconduct took place unless the JCIO decides that this is unnecessary taking into account all the circumstances of the complaint.

Under rule 23 of the 2023 Rules, the JCIO must dismiss complaints that have been accepted for consideration if it determines that any of the following criteria apply:

- (a) The alleged facts are obviously untrue;
- (b) Even if the alleged facts were true, they would not require a disciplinary sanction to be issued;
- (c) It is about a judicial decision or judicial case management, and raises no question of misconduct;
- (d) It is vexatious;
- (e) It is misconceived;
- (f) It raises a matter which has already been dealt with, whether under these Rules or otherwise, and does not present any significant new evidence;
- (g) It is about the private life or the professional conduct in a non-judicial capacity of a person holding an office and raises no question of misconduct;
- (h) For any other reason it does not relate to misconduct by a person holding an office.

## 5. Disciplinary action

This section gives an overview of the types of cases which have resulted in the Lord Chancellor and the Lord Chief Justice issuing a disciplinary sanction during the reporting year.

A key principle of the judicial disciplinary system is that, where a judicial office-holder is found to have committed misconduct, a disciplinary sanction must be issued. The power to issue sanctions rests solely with the Lord Chancellor and the Lady Chief Justice (or, in some cases, a senior judge acting on the latter's behalf). In each case of misconduct, they must jointly agree the sanction.

As noted in section one, the sanctions for misconduct are set out in the Constitutional Reform Act 2005. They are, in order of severity: formal advice, formal warning, reprimand, and removal from office.

The sanction given in a case will depend on several factors; the main one being the seriousness of the conduct itself. Factors which are likely to be considered in deciding the sanction include:

- Whether the office-holder has accepted responsibility for their actions;
- Whether the conduct has affected other people or risked damage to the reputation of the judiciary as a whole;
- Whether factors such as ill-health or other personal issues were found to have affected the office-holder's behaviour;
- Decisions made in any other cases of a similar nature;
- Any previous disciplinary findings against the office-holder.

The imposition of a disciplinary sanction, even at the lower end of the scale of severity, is a serious matter for a judicial office-holder. Sanctions are published on the JCIO website, and they are kept on an office-holder's record indefinitely.

In 2022-23, there were 36 cases of misconduct by judicial office-holders. The table below shows a breakdown of these cases by sanction and type of office:

Office	Formal advice	Formal Warning	Reprimand	Removed	Total
Magistrates	6	11	1	4	22
Salaried and fee paid courts judges	3	1	0	0	4
Tribunal members	3	6	0	0	9
Coroners	0	0	0	1	1
<b>Total</b>	<b>12</b>	<b>18</b>	<b>1</b>	<b>5<sup>3</sup></b>	<b>36</b>

<sup>3</sup> This figure includes one judicial office-holder who resigned before the Lord Chancellor and the Lord Chief Justice could implement their decision to remove him from office. A disciplinary statement was issued on the JCIO's website explaining the outcome.

The number of cases of misconduct by magistrates reflects the fact that magistrates make up approximately 60% of judicial office-holders in England and Wales, whereas court judges, for example, make up approximately 15% of the judiciary.

For comparative purposes, the table below contains a breakdown of complaints which were assessed as raising a question of misconduct and which, following further consideration, were either dismissed or upheld. The total received figures include complaints rejected and complaints not concluded in this reporting year.

Category	Total Received	Dismissed	Upheld
Inappropriate behaviour/comments	437	239	27
Judicial delay	42	20	1
Failure to meet sitting requirements	10	0	3
Motoring offences	4	0	4
Misuse of judicial status	10	6	1
<b>Total<sup>4</sup></b>	<b>503</b>	<b>265</b>	<b>36</b>

## Formal advice

Examples of cases which resulted in a sanction of formal advice included a judicial office-holders:

- accruing six penalty points on their driver's licence;
- using improper language and displaying intemperate behaviour towards a colleague.

## Formal warning

Examples of cases which resulted in a sanction of formal warning included a judicial office-holder:

- making offensive comments regarding a protected characteristic as defined under the Equality Act 2010 to a candidate during their interview for a judicial office;
- consuming alcohol at work;
- committing multiple speeding offences, resulting in a period of disqualification from driving, and failing to comply with the requirement to report prior speeding offences to the leadership judge.

## Reprimand

Only one case resulted in a sanction of reprimand during this reporting year:

<sup>4</sup> The "total received" figure does not match the total for the "dismissed" and "upheld" complaints because a number of cases which were received during the given financial year were not concluded within the same period.

- a magistrate who failed to meet the mandatory sitting requirements of their role and failed to engage satisfactorily with the bench chair. Periods of authorised absences were accepted as mitigating factors.

## Removal from office

Examples of cases which resulted in removal from office during this reporting year include:

- judicial office-holders who failed, without reasonable excuse, to meet the mandatory sitting requirements of their role and failed to engage with their bench chairs, with no mitigating circumstances;<sup>5</sup>
- a judicial office-holder who publicly associated themselves with activity in relation to government policy;
- a judicial office-holder who deliberately mislead a senior judicial office-holder about a serious conduct-related matter.

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<sup>5</sup> The rules which govern the handling of disciplinary cases provide that an office-holder may be recommended for removal from office without further investigation if he/she has failed, without a reasonable excuse, to meet minimum sittings requirements.

## 6. Judicial Appointments and Conduct Ombudsman

The independent Judicial Appointments and Conduct Ombudsman (JACO) is responsible for reviewing how complaints of misconduct have been handled by the JCIO. If the Ombudsman decides that the JCIO has mishandled a complaint, he may refer the matter back to us for re-investigation and/or recommend changes to procedures.

In 2022-23, the Ombudsman investigated 38 complaints about the JCIO. He upheld, or partially upheld, 13 of those complaints. This equates to fewer than 1% of the complaints we received during the reporting year.

There were also 127 complaints made about the JCIO which were dismissed after a preliminary investigation by the Ombudsman.

### Examples of complaints upheld by JACO

Examples of JACO reviews which resulted in the JCIO reopening an investigation include:

- a complaint that was initially dismissed under rule 21(a) where the Ombudsman took the view that the allegations were sufficiently particularised and, therefore, the decision to dismiss on that basis was unsafe. This complaint was partially upheld.
- a complaint that the JCIO agreed to reinvestigate but subsequently failed to proactively progress the case or keep the complainant updated. The JCIO apologised.

Further information about the Judicial Appointments and Conduct Ombudsman can be found here:

<https://www.gov.uk/government/organisations/judicial-appointments-and-conduct-ombudsman>

# Annex 1: Publication periods for JCIO Disciplinary Statements

Since August 2022, the following publication periods apply to the disciplinary statements that are published on the JCIO's website:

Sanction Imposed	Publication Period
Formal Advice	Two years
Formal Warning	Four years
Reprimand	Six years
Removal from Office (except for failure to meet minimum sitting requirements)	Indefinite
Removal from Office for failure to meet minimum sitting requirements	Five years

