

JUDICIAL CONDUCT COMMISSIONER

Report for the year to 31 July 2021

Presented to the House of Representatives pursuant to Clause 9(2), Schedule 2 of the
Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004

Report of the Judicial Conduct Commissioner for the year to 31 July 2021

Introduction

References in this report to the Act, Schedules, sections or clauses relate to the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004.

The purpose of the Act is set out in section 4. It is to enhance public confidence in, and to protect the impartiality and integrity of, the judicial system.

Clause 9(1) of Schedule 2 requires the Commissioner in each year to provide to the Attorney-General a report on the exercise of the functions under the Act.

The functions are set out in section 8(1). They are:

- to receive complaints about Judges and to deal with the complaints in the manner required by the Act
- to conduct preliminary examinations of complaints
- in appropriate cases, to recommend that a Judicial Conduct Panel be appointed to inquire into any matter or matters concerning the conduct of a Judge.

Complaints summary

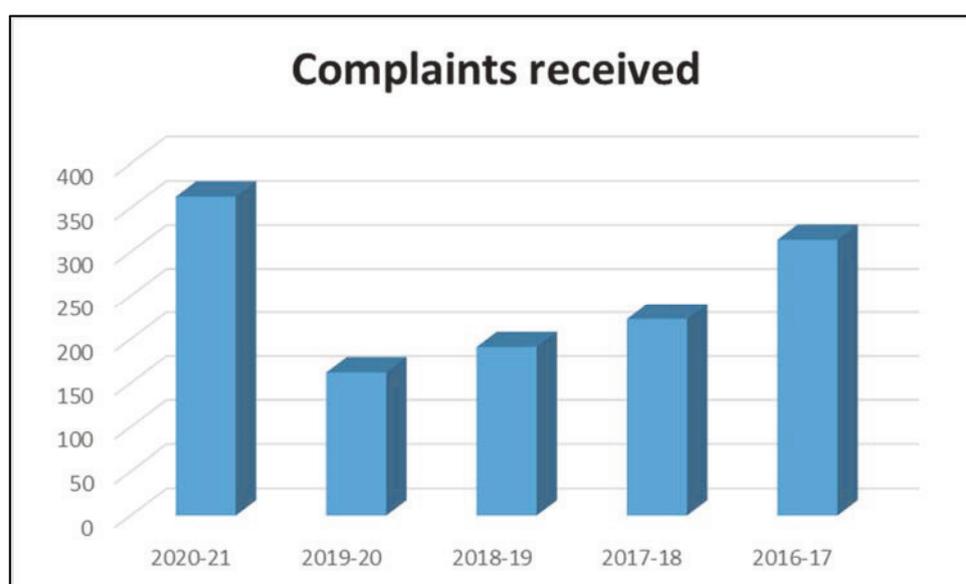
	Year to 31 July 2021	Year to 31 July 2020
Number of complaints	214	136
Number of Judges	363	162
Examination not completed	87	18
Examination completed	276	177
Referred to a Head of Bench	16	8
Recommendation for appointment of a Judicial Conduct Panel	1	1

Complaints table

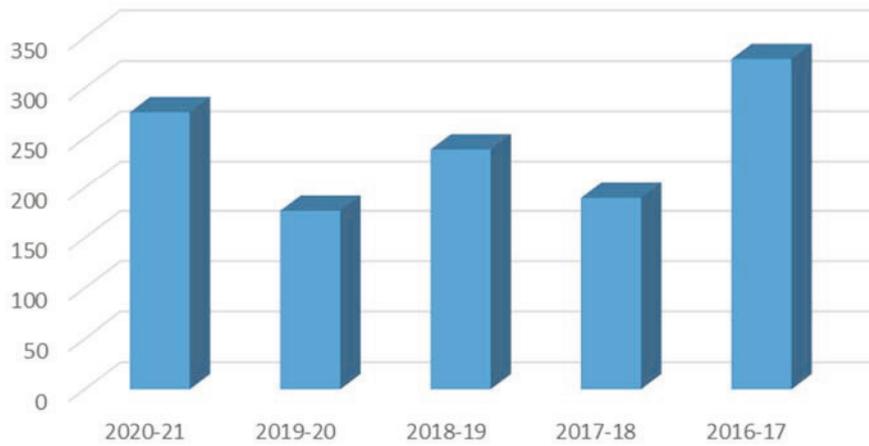
Five-year comparison of complaints: receipt, examination and outcome

	2020-21	2019-20	2018-19	2017-18	2016-17
Received	363	162	191	223	314
Number of unfinalised complaints from previous year	1	33	81	48	64
Total	364	195	272	271	378
Examination and outcome					
No further action (s15A)	38	42	44	29	56
Dismissed (s16)	214	122	186	147	269
Referred to Head of Bench (s17)	14	8	8	7	2
Referred to Head of Bench (s8B)	2	0	1	1	0
Recommendation for Judicial Conduct Panel (s18)	1	1	0	0	0
Withdrawn	3	4	0	6	3
Total complaints finalised	276	177	239	190	330
Complaints not finalised	88	18	33	81	48
Total	364	195	272	271	378

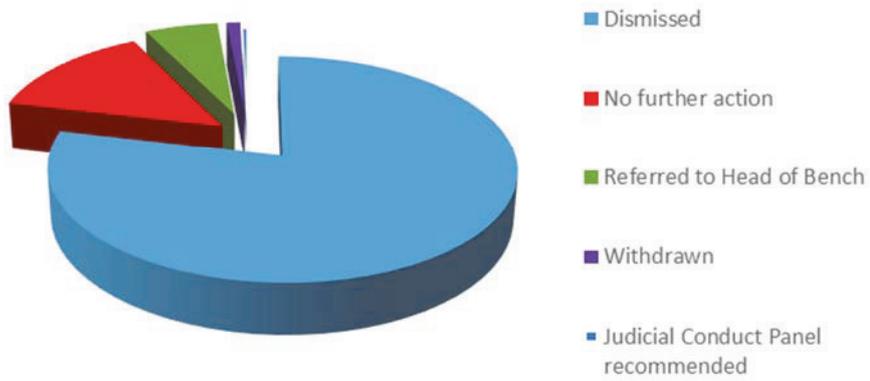
Complaints illustrations



Complaints examined



Complaints decisions



Complaints received by Court

	2020-21	2019-20	2018-19	2017-18	2016-17
Supreme Court	75	7	15	54	158
Court of Appeal	26	11	8	10	18
High Court	61	39	32	45	35
District Court	111	58	86	76	57
Family Court	74	35	43	31	40
Youth Court	2	0	1	1	0
Environment Court	0	1	1	0	0
Employment Court	2	5	2	1	0
Māori Land Court	2	4	0	3	1
Court Martial	0	0	0	0	0
Coroners	2	2	3	2	5
Not specified	8	0	0	0	0
Total	363	162	191	223	314

Commentary

Statistics

1. It is appropriate to repeat the need for caution in reading the complaints statistics. Section 11(1) requires the Commissioner to:

“...receive and deal with every complaint made under this section about the conduct of a Judge...”
2. It follows that a complaint arising solely from proceedings in a District Court will (usually) appear as just one complaint in the statistics. However, a complaint arising from Supreme Court or Court of Appeal proceedings will (usually) be counted as five or three as the case may be. In other words, it depends on the number of Judges involved in the proceedings from which a complaint arises.
3. Of the total of 363 complaints about individual Judges, the number of actual complaints was 214. Those figures represent a significant increase over the year to 31 July 2020 when the comparable numbers were 162 and 136. Part of that can be explained by an increase in the number of complaints about the Supreme Court and the Court of Appeal but there were certainly increases in complaints relating to other Courts not least the District Court and the Family Court where numbers virtually doubled.

Types of complaints

4. Once again most complaints have arisen from disagreement with the outcome of proceedings or disagreement with particular decisions made by a Judge. Section 8(2) says it is not a function of the Commissioner to challenge or call into question the legality or correctness of any instruction, direction, order, judgment or other decision made by a Judge. Those functions are for the Courts through rights of appeal or rights to apply for judicial review and sections 16(1)(a) and 16(1)(f) usually mean there is no option but to dismiss the complaints. Having said that, it is necessary for

each complaint to be carefully examined to see whether there might be any exception to the strict application of those sections and, in the year to 31 July 2021, there have been such exceptions with the complaints having been referred to a Head of Bench in consequence.

5. Some two years ago there was a growing focus on behaviour thought to be overbearing, harassing, bullying or inconsistent with the Guidelines for Judicial Conduct. Complaints of that sort continue to be received. There have been several from people who have not been represented by a lawyer in their proceedings and who have struggled with the technicalities of the law and procedure in what is, inevitably, a tense environment. Others have come from lawyers representing their clients. In both categories, significant assistance is gained from audio recordings of hearings. While there have been isolated referrals to Heads of Bench, the overall impression is that overbearing and bullying behaviour by Judges is relatively rare. There seems to be an appreciation of the need for courtesy to everyone coming before the Courts and for moderation by Judges in the discharge of the obligation to maintain proper conduct during a hearing.
6. The statistics show a doubling of complaints flowing from proceedings in the Family Court. It will be interesting to see whether that continues. It may be that the challenges brought about by COVID-19 have increased the agitation and tension arising from disputes over children and property. For the moment the complaints appear, mainly, to be based on disagreement with judicial decisions.

Recommendations to the Attorney-General to appoint a Judicial Conduct Panel

7. In accordance with section 18(1), one recommendation has been made to the Attorney-General that a Judicial Conduct Panel be appointed to inquire into conduct alleged by the complainant. On my assessment, the conduct, if established, would fall well short of accepted judicial standards.
8. The recommendation brought to an end my involvement in the matter.

Referrals to Heads of Bench

9. There has been one referral under section 8B(3) which requires that action when both the Commissioner and Deputy Commissioner have decided they have a conflict of interest. The referral was to the Chief District Court Judge.
10. Otherwise, section 17 requires the referral of a complaint to a Head of Bench unless:
 - the power under section 15A to take no further action on a complaint is exercised; or
 - the complaint is dismissed under section 16; or
 - a recommendation to the Attorney-General is made in accordance with section 18.

11. Referrals made related to:
- a complaint made by a lawyer alleging breach of expected standards of courtesy. (Referred to the Chief District Court Judge);
 - an unreasonable delay in issuing a costs determination. (Referred to the Chief District Court Judge);
 - unfair treatment by a Judge arising from an unsubstantiated allegation of racism with the referral being made out of caution in the context of a principal purpose of the act to enhance public confidence in the judicial system. (Referred to the Chief District Court Judge);
 - issues relating to victim impact statements and treatment of victims in the Youth Court. (Referred to the Chief District Court Judge); and
 - a complaint which expressed wide-ranging concern about challenges faced by women and children in the Court system. (Referred to the Chief High Court Judge and the Chief District Court Judge).

Matters drawn to the attention of Heads of Bench

12. In accordance with longstanding agreed practice, all decisions made on complaints (regardless of outcome) are sent to the complainant, to the Judge about whom the complaint was made and the relevant Head of Bench. In the year to 31 July 2021, as in earlier years, there have been instances where issues are drawn to the attention of the relevant Head of Bench notwithstanding that there may have been no formal referral under section 17. The purpose is to ensure the Heads of Bench (and, in appropriate cases, the Principal Family Court Judge who is not a Head of Bench for the purposes of the Act) are aware of developing trends or issues relevant to their role in ensuring the orderly conduct of Court business, overseeing and promoting professional development, continuing education and training of Judges as well as giving directions and setting standards for best practice and procedure.
13. Included in such matters in the year under review have been courtesy, fairness, timeliness, rights of victims at sentencing and other issues having a bearing on the purposes of the Act to ensure public confidence in the judicial system and to protect its impartiality and integrity.

Contact with the judiciary

14. In accordance with section 14(1), written notification is sent without delay to the Judge who is the subject of the complaint. Section 14(3) entitles the Judge to request and receive a copy of the complaint. However, a copy of the complaint is always provided with the notification if the Judge's response is being sought under section 15(2). Judges respond promptly and helpfully to such requests.
15. As noted in paragraph 12 above, the Judge about whom the complaint has been made and the relevant Head of Bench both receive a copy of the decision in every instance. The flow of information has been assisted by arrangements which now have most correspondence with Judges and

Heads of Bench conveyed by email rather than post. All contact with Judges (whether those complained about or Heads of Bench) has been in writing.

Personnel

16. Wayne Newall (Manager) and Chris Flaus (Adviser) within the Ministry of Justice Appointments and Specialist Functions group have both provided consistent, thoughtful and cheerful assistance to Kathryn Snook (the Deputy Judicial Conduct Commissioner) and to me. So have others within the Ministry of Justice and it is all greatly appreciated.
17. Kathryn Snook has filled the Deputy Commissioner role since 2015. She has done so with her typical energy, commitment and fine judgement. A profound debt of gratitude is due to her.



Alan Ritchie

Judicial Conduct Commissioner

18 August 2021