

JUDICIAL CONDUCT COMMISSIONER

Report for the year to 31 July 2017

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 2017

Introduction

1. References in this report to the Act, Schedule, sections or clauses relate to the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004.
2. 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.
3. The functions are set out in section 8. 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 statistics

(a) Received

314 being 41 fewer (12%) than for the year to 31 July 2016

(b) Examined

330 being 59 fewer (16%) than for the year to 31 July 2016

(c) Unfinalised

48 being 16 fewer (26%) than for the year to 31 July 2016

(d) Referrals to Heads of Bench

2 being 4 fewer (66%) than for the year to 31 July 2016

(e) Recommendations for appointment of a Judicial Conduct Panel

No recommendations have been made. Since the commencement of the Act on 1 August 2005 there has been only one recommendation. That was in the year ended 31 July 2010.

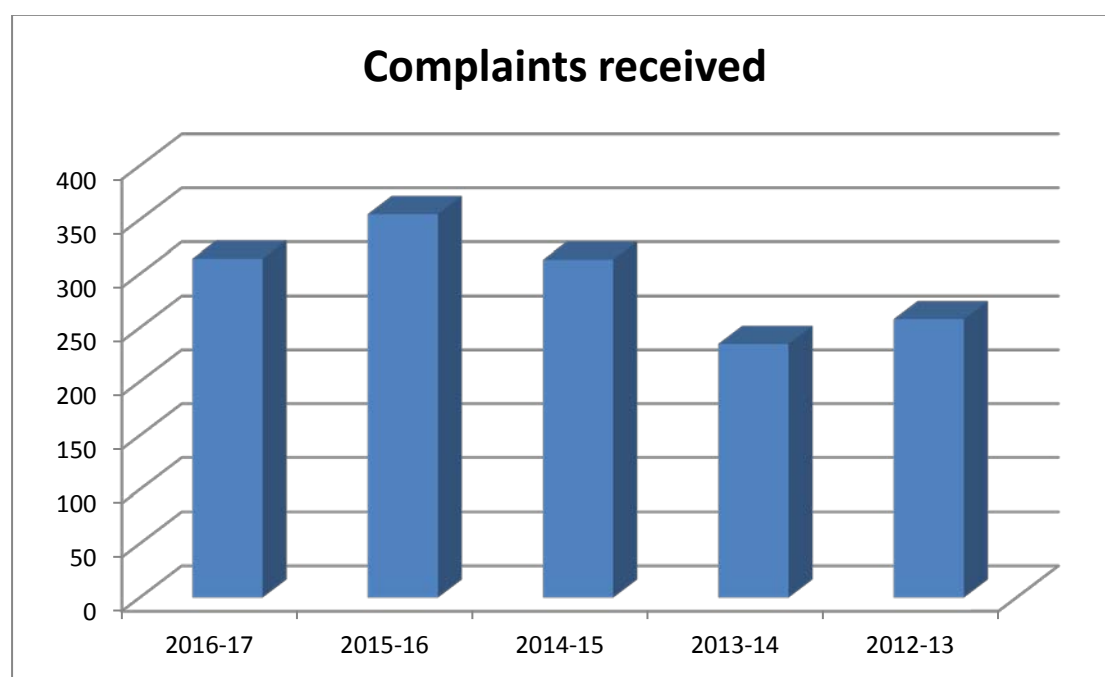
Complaints table

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

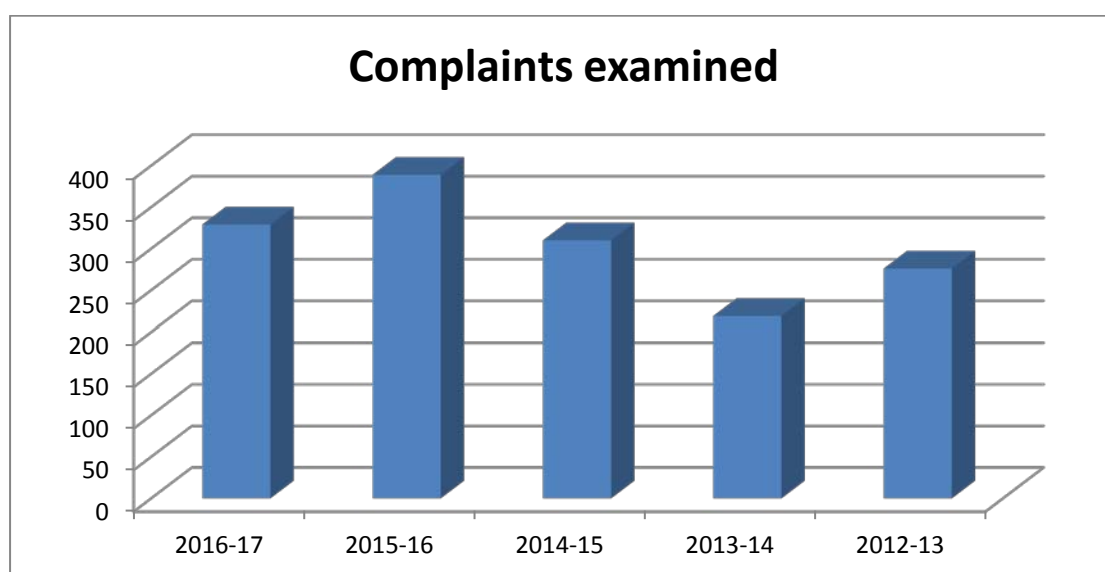
	2016-17	2015-16	2014-15	2013-14	2012-13
Received	314	355	313	235	258
Number of unfinalised complaints from previous year	64	98	95	79	97
Total	378	453	408	314	355
Examination and outcome					
No further action taken (section 15A)	56	42	33	25	62
Dismissed (section 16)	269	336	267	184	196
Referred to Head of Bench (section 17)	2	6	2	4	7
Referred to Head of Bench (section 8B)	0	0	4	0	1
Recommendation for Judicial Conduct Panel (section 18)	0	0	0	0	0
Withdrawn	3	5	4	6	10
Total complaints finalised	330	389	310	219	276
Complaints not finalised	48	64	98	95	79
Total	378	453	408	314	355

Complaints illustrations

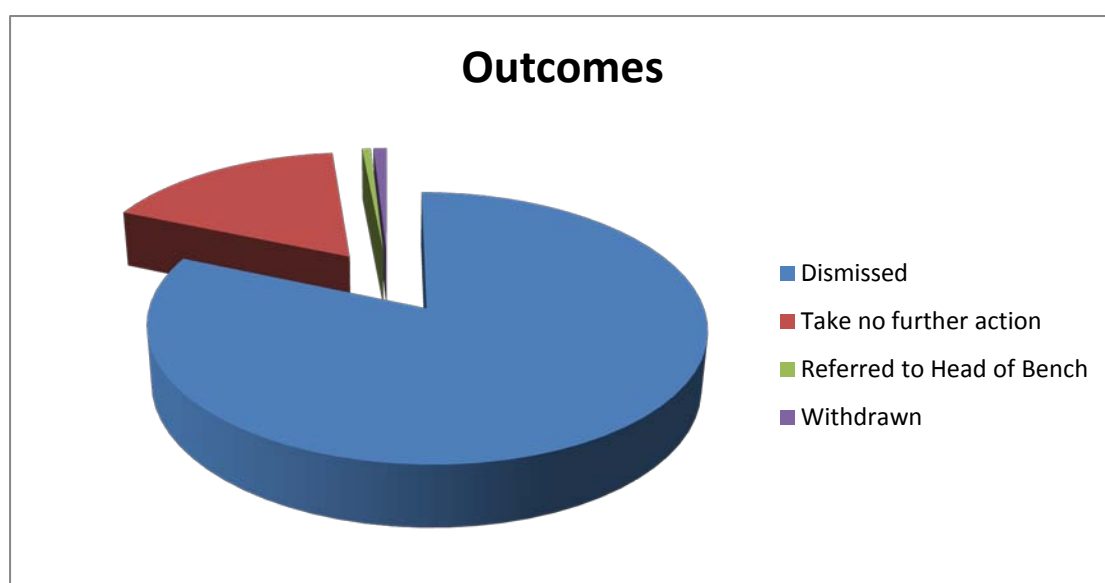
(a) Complaints received



(b) Complaints examined



(c) Outcomes



Complaints received: – by Court

	2016-17	2015-16	2014-15	2013-14	2012-13
Supreme Court	158	221	177	67	34
Court of Appeal	18	5	16	21	46
High Court	35	32	45	62	65
District Court	57	49	52	53	67
Family Court	40	43	16	24	30
Youth Court	0	0	0	0	0
Environment Court	0	1	0	5	4
Employment Court	0	1	0	1	4
Maori Land Court	1	0	2	0	5
Court Martial	0	0	0	0	0
Coroners	5	3	5	2	3
Total	314	355	313	235	258

4. There is a continuing need for care to be taken in the interpretation of the figures set out in the above table. That is because section 11(1) of the Act requires the Commissioner to "... deal with every complaint made under this section about the conduct of a Judge ..."
5. That creates no difficulty when a person makes a complaint about a single Judge sitting, for example, in the District Court. The position is different when a person complains about several Judges comprising a panel of Judges at an appellate level as in the case of the Supreme Court.
6. Of the total of 314 complaints about individual Judges, the number of actual complaints was 177. However, the 158 complaints shown as having been made about Supreme Court Judges came from only 13 individuals of whom some have been declared vexatious litigants. Last year's report advanced the view that many of the complaints about Supreme Court Judges were driven by it being the final appellate court. It seems reasonable to draw the same conclusion this year.

The nature of complaints

7. There has been no significant change in the range of complaints received. Partiality, discourtesy, incapacity and incompetence along with corruption, conspiracy and other criminal acts have all been asserted.
8. Most often, though, the preliminary examination required by the Act has readily exposed not only a lack of evidence or substance but also that the complaint has arisen from a relatively straightforward disagreement with a Judge's decision. Usually there is no option but to dismiss complaints like that because of the effect of section 8(2) under which the Commissioner is unable to challenge or call into question the legality or correctness of a judicial decision.
9. Section 16(1)(f) also has common application to such complaints. The Commissioner is required by that provision to dismiss any complaint about a judicial decision or other judicial function that is or was subject to a right of appeal or a right to apply for judicial review.
10. However, the Commissioner does examine every complaint to check whether there may be any aspect warranting intervention within the limits of jurisdiction allowed by the Act. Those limits and the principle of judicial independence mean that any intervention must clear a relatively high threshold.
11. It has been necessary to deal firmly with what has been a problem of large numbers of complaints made by a small number of individuals falling squarely into the categories covered by section 16(1)(d) and (e) i.e. complaints which are trivial, frivolous, vexatious or not made in good faith. It remains to be seen but it may be that a recent reduction in such complaints is attributable to that firm approach.

Referrals to Heads of Bench

12. There have been fewer referrals this year with just two formal referrals rather than the six of the previous year. Both formal referrals were to the Chief District Court Judge.
13. The first related to a major purpose of the Act viz to enhance public confidence in the judiciary. This was a somewhat difficult situation relating to the development and testing of procedures and guidelines required by new legislative provisions.
14. The second arose from behaviour outside a courtroom which may have diminished public confidence in the Judge's suitability for office.
15. There was also one matter to which the specific attention of the Head of the Family Court Bench was drawn in a way short of a formal referral. It involved certain comments made by a Judge which caused unintended distress to the complainant. The Judge concerned had unreservedly apologised and the Commissioner (in accordance with section 15A(1)) decided to take no action beyond advising the Principal Family Court Judge in the expectation that the need for sensitive language in the Courts could be reinforced.

Contact with the judiciary

16. The Commissioner and Deputy Commissioner are required or authorised by the Act to have contact with Judges for various purposes. These include notifying Judges of complaints, seeking responses and advising them of decisions. There is also contact with Heads of Bench as necessary.
17. The contact has been in writing. As with the 2015–16 year, there has been no need for any face-to-face or telephone communication about any complaint. And, once again, the responses of Judges, whether those complained about or Heads of Bench, have been consistently helpful and constructive.

Support

18. The Commissioner is grateful to Ms Kathryn Snook for the exemplary way in which she has discharged her role as Deputy Commissioner.
19. The administrative management and personnel provided by the Ministry of Justice have been excellent and much appreciated.



Alan Ritchie
Judicial Conduct Commissioner
4 August 2017