



Neutral Citation Number: [2019] EWHC 2404 (Admin)

Case No: CO/2277/2018

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 September 2019

Before :

Anthony Ellera QC Deputy High Court Judge

Between :

THE QUEEN
on the application of

Claimant

MARION LONSDALE

- and -

THE JUDICIAL APPOINTMENTS AND
CONDUCT OMBUDSMAN

Defendant

Nicholas Davidson QC (instructed by Irwin Mitchell) for the Claimant
Iain Steele (instructed by **The Government Legal Department**) for the Defendant

Hearing date: 9 April 2019

Approved Judgment

Anthony Ellera QC Deputy High Court Judge :

1. By this claim the Claimant (“Ms Lonsdale”) has sought Judicial review of a decision by the Defendant (“the Ombudsman”) on 26 February 2018 rejecting her complaints that the Judicial Conduct Investigations Office (“JCIO”) erred on 10 October 2017 in rejecting her complaints about the behaviour of Briggs LJ (as he then was). She had made complaints about his behaviour in rejecting on 19 October 2016 her renewed oral application for permission to appeal certain orders and then on 19 June 2017 her application to re-open the refusal of permission to appeal.
2. An application for permission to seek judicial review was refused on paper on 7 September 2018 by Mr John Howell QC sitting as a Deputy High Court Judge.
3. That application was renewed before me sitting in open Court on 9 April 2019.
4. Mr Nicholas Davidson QC appeared pro bono for Ms Lonsdale and Mr Iain Steele appeared for the Ombudsman.
5. I am grateful for their respective Skeleton Arguments and oral submissions. In their light, I reserved this decision.

Ms Lonsdale

6. Ms Lonsdale practised full-time as a Barrister from 1983 to April 2013.
7. On a hearing before a Disciplinary Tribunal on 19 October 2009 five charges of professional misconduct were found against Ms Lonsdale regarding acting in breach of the Public Access Rules. The sentence imposed was a direction that she be advised as to her future conduct specifically in regard to the Public Access Rules and she was ordered to pay costs of £4,379. Complaints against her that she had conducted litigation were dismissed.
8. Ms Lonsdale applied in June 2010 for judicial review against the Bar Standards Board and the Legal Services Ombudsman. On 16 June 2011 Davis J (as he then was) at an oral hearing refused permission to advance the grounds for seeking judicial review save for a ground in the first claim challenging the costs order in regard to which it was alleged there was a want of power to make it.
9. On 22 October 2014 Patterson J dismissed Ms Lonsdale’s application for judicial review in relation to the costs order and on 18 December 2014 she made an order for costs of the judicial review claim in the sum of £5,000.
10. In June 2012 Ms Lonsdale had also sought judicial review of the disciplinary decision by reason of the alleged invalidity of appointment of members of the Disciplinary Panel pursuant to the Disciplinary Tribunal Regulations 2009. That claim was deferred or stayed pending the ruling by the Court of Appeal in other cases in *Mehey v. Visitors to Inns of Court* [2014] EWHC Civ 1630 which raised similar appointment issues. It was only on 2 March 2015 that Ms Lonsdale’s application for permission to pursue the appointment ground was refused by Males J (as he then was) who certified that it was a complaint without merit.

11. Ms Lonsdale sought to appeal Patterson J's costs decision and the decision of Males J. Permission to appeal those decisions was refused by Briggs LJ on 25 October 2016. It was Ms Lonsdale's then application to re-open the application that was refused under CPR 52.30 by Briggs LJ on 19 June 2017.

JCIO Application

12. On 15 September 2017 Ms Lonsdale complained to the JCIO about judicial misconduct by Briggs LJ in connection with his Order of 19 June 2017 and prior acts. She described the nature of her complaint under six headings:
 - (1) The Judge's failure to recuse himself.
 - (2) The Judge sat as a judge in his own cause and in breach of the rule that no-one should act in his own cause.
 - (3) The Judge should have recused himself from hearing the case as he was not capable of being impartial (given his past services on the Bar Council and the Bar Standards Board Committees).
 - (4) The Judge had unlawfully entered the arena as he made up three grounds for dismissing the application for permission to appeal which were allegedly untrue and which he allegedly could not have believed in: she complained that bad points made by the Judge against the prospects of her appeal could not have been held honestly.
 - (5) The Judge had indicated to her on the oral permission hearing that she should have placed on record matters leading to her recording of further matters in writing. Her point was that her further submissions were ignored in relation to the permission to appeal decision and that his subsequent rejection of the re-opening of the matter asserting that she had not suffered from "real injustice" could not properly have been held.
 - (6) The Judge acted towards her in a hostile and misogynistic and discriminatory manner. She placed reliance on her being a woman of the same age as the Judge and having hard times in recent years (the Disciplinary Tribunal proceedings, her financial hardship affected by a wrongful costs order and the need to care for her elderly mother). Further, she relied upon regard by the Judge to her retirement from the Bar.
13. On 10 October 2017 the JCIO rejected Ms Lonsdale's complaint. It referred to rule 8 of the Judicial Conduct (Judicial and other Office Holders) Rules 2014 which required that to be accepted for investigation a complaint must contain an allegation of misconduct. The JCIO considered that the complaint did not contain an allegation of misconduct, it being about the Judge's decision-making, and therefore fell to be rejected in accordance with Rule 8. The JCIO stated it was:

“unable to investigate, challenge or question a Judge's decision or case handling. This is because in line with their case management functions, Judges may decide what evidence they wish to consider and the weight that should be applied to the evidence. This discretion extends to determining whether an application should be struck out. Please also note that it is not possible to guarantee in advance which Judge will hear a particular case unless a Judge has ordered that a case should be reserved to him. Members of the public are not permitted to pick

and choose in advance which Judges they would like to preside over a matter. While it is always open to a party in a case to apply to the Judge to recuse himself from hearing the case, whether to agree to such an application is a matter for the Judge concerned ... It might help if I explain that Judges are constitutionally independent. This means that they are entitled to make decisions and manage hearings free from outside interference by officials (including this office), Government ministers or other Judges. This applies regardless of how obvious it might seem to the complainant that the judicial officeholder's decisions and case management were flawed ... Judicial decisions can only be challenged through the courts. A judicial disciplinary process cannot be used as an alternative method of challenge."

The letter of 10 October 2017 went on to point out to Ms Lonsdale that she could complain to the Ombudsman if she believed that the JCIO handled her complaint incorrectly:

"The Ombudsman does not have the power to investigate your original complaint, but he can consider how we have handled it."

14. By email reply on 10 October 2017 Ms Lonsdale observed that the JCIO had not even considered her complaint:

"It is a very sad state of affairs that the body looking into complaints cannot read and understand the complaint. I shall take all course open to me, including judicial review if that course is open to me."

15. By email reply on 11 October 2017 the JCIO confirmed its decision in its letter of 10 October 2017 and repeated that Ms Lonsdale could complain to the Ombudsman "if you believe this Office had mishandled [your] complaint."

16. Ms Lonsdale began her complaint to the Ombudsman by email on 10 October 2017. On 11 October 2017 by email the Ombudsman sought to set out his role and remit. He set out:

"The role of the Ombudsman is to conduct an investigation into the process by which the JCIO ... handle investigations into complaints about the personal conduct of judicial officeholders, and to consider whether such investigations are conducted fairly and appropriately in accordance with set procedures. The Ombudsman is not an appeal mechanism and he cannot look into the original complaint, comment on the aspects of the Court proceedings nor the conclusions reached by the JCIO in the investigation of the complaint."

He attached a copy of the Ombudsman Complaint Booklet which sets out his role and remit in greater detail. He observed:

“It is therefore essential that you follow the suggested advice and support your complaint with specific examples of how the investigation into your complaint was not properly handled.”

17. On 24 October 2017 Ms Lonsdale made a Conduct Complaint Form to the Ombudsman. Her allegation was that JCIO misdirected itself in law and fact and failed to investigate each and every one of her grounds of complaint and asserted it had given reasons which were bad in law and inapplicable to the facts of her case. By box 4 of her form she restated the six grounds she had raised with the JCIO (paragraph 12 above) and added under each ground ‘this is an issue of misconduct which falls to be considered’.
18. On 26 February 2018 the Ombudsman sent to Ms Lonsdale a copy of his final report. I cite parts of the final report:
 - “3. Ms Lonsdale complained to me about the JCIO’s assessment that her complaint did not contain an allegation of misconduct. She felt that the JCIO had not considered, read or understood her complaint because:
 - The reason they had provided for rejecting her concerns were ‘bad in law and inapplicable to the facts of [her] case and situation’; and
 - The points she had outlined to the JCIO raised concerns of misconduct and should have been considered and investigated.
 4. In terms of redress, Ms Lonsdale has asked that:

‘The decision of the JCIO be quashed and that they be directed to consider each of my complaints and that the Ombudsman make such consequential directions as he sees fit.’
 5. I have not upheld Ms Lonsdale’s complaint as I am satisfied the JCIO investigated the complaint in accordance with the relevant legislation and guidance ...
 11. Ms Lonsdale complained to me that the point she had outlined to the JCIO raised concerns of misconduct and should have been considered and investigated.
 12. Ms Lonsdale acknowledged that not every judgment on recusal would amount to misconduct, but disagreed with the JCIO’s assertion that Briggs LJ’s failure to recuse himself was not something it could consider. She suggested to me that the conduct of a Judge and the way the recusal was dealt with might amount to misconduct. Ms Lonsdale believed that Briggs LJ’s judgment in this instance and his failure to provide her with an opportunity

to make submissions on his suitability amounted to misconduct.

13. Ms Lonsdale complained to me that the reasons the JCIO provided for rejecting her complaint were ‘bad in law and inapplicable to the facts of [her] case and situation.’ I note that the JCIO suggestion that it was open to a party to apply to the Judge to recuse themselves was not applicable to the circumstances of Ms Lonsdale’s case. However, she had not explicitly told the JCIO that she had not had the opportunity to apply for Briggs LJ to recuse himself. In any event, this did not change the fact that the JCIO correctly advised her that it was for a Judge to decide whether to recuse himself from a case. I cannot say whether Article 6 of the European Convention for the Protection of Human Rights, which gives claimants a right to a fair trial, ever makes a recusal mandatory or automatic. However, I am satisfied that the JCIO’s assessment that Ms Lonsdale did not provide any evidence that did not relate to a judicial decision and judicial case management the JCIO appropriately advised her that, as her concerns related to judicial decisions, it was not something it would consider. This was consistent with the guidance provided on the JCIO’s website which concludes the question of recusal as an example of something it cannot investigate. I do not find any maladministration in its approach.
14. Ms Lonsdale felt that the JCIO had failed to appreciate the context in which her complaint was made and that it had, therefore, been wrongly dismissed without consideration. For example, Ms Lonsdale complained to me that the JCIO’s statement that judicial decisions can only be challenged through the courts did not provide her with an answer to her concerns as there was no right of appeal against a CPR 52.30 decision. Whilst the JCIO might helpfully have acknowledged that there is no right of appeal, the JCIO staff do not need to be legally trained and they do not provide advice on core procedure. I would not expect them to have any in depth knowledge of approved procedures and Ms Lonsdale did not say in her correspondence with the JCIO that a right of appeal was not available to her. In any event, Ms Lonsdale was essentially complaining about a judicial decision and judicial case management as detailed in guidance and the principle of judicial independence would preclude the JCIO from revealing such matters regardless of whether a further appeal was possible. I disagree with Ms Lonsdale’s contention that the fact that there is no right of appeal for a CPR 52.30 application potentially made

the matters complained of misconduct. The JCIO correctly advised Ms Lonsdale that judicial decisions can only be challenged through the courts and could not have considered her concerns in this regard. I do not find any maladministration in its approach.

15. Ms Lonsdale was aggrieved with the JCIO's assessment that her concerns about LJ Briggs' dishonesty were not something that it could consider. She suggested that it was misconduct because he made up reasons for dismissing her original application, denied that he had predetermined her case and failed to consider her evidence which discredited his original decision. I am content that the JCIO appropriately advised her that it could not look at her concerns. It explained that JCIO was unable to investigate, challenge or question a judge's decisions or case handling and this included what evidence was considered and the weight given to it. This was consistent with the guidance provided on the JCIO's website which includes 'What evidence should be, or has been, considered' as an example of something that it cannot investigate. I do not find any maladministration in its approach.
16. Evidence that a Judge has been hostile misogynistic or discrimination might raise a question of misconduct that he JCIO should investigate further. However, it was consistent with the appropriate guidance for the JCIO to have found that the allegations, including that LJ Briggs had discriminated against her because he was male and she was female and because he was wealthy and she was not, related to judicial decision and judicial case management and were not supported by evidence of misconduct on which the JCIO could rely. Ms Lonsdale's concerns were properly rejected and I do not find any maladministration in the JCIO's approach."
19. The findings of the Ombudsman were accepted by the Judicial Office Head of HR Operations and Casework, replying on behalf of the Lord Chief Justice and Lord Chancellor.

The 2005 Act

20. Section 62(1) of the Constitutional Reform Act 2005 ("the 2005 Act") provides there is to be a Judicial Appointments and Conduct Ombudsman. The Ombudsman's functions include, in prescribed circumstances, reviewing the exercise by any person of a "regulated disciplinary function". The latter term is defined in s.110(8) as meaning the Lord Chancellor's and Lord Chief Justice's functions in respect of disciplining Judges. The JCIO supports the Lord Chancellor and the Lord Chief Justice in those functions and is responsible for considering allegations of judicial misconduct and assessing whether behaviour alleged could amount to misconduct.

21. Section 110 specifies the types of complaint that fall within the Ombudsman judicial conduct remit. It provides as follows:

“110. Applications to the Ombudsman

(1) This section applies if an interested party makes an application to the Ombudsman for the review of the exercise by any person of a regulated disciplinary function, on the grounds that there has been –

(a) a failure to comply with prescribed procedures, or

(b) some other maladministration.

(2) The Ombudsman must carry out a review if the following three conditions are met.

(3) The first condition is that the Ombudsman considers that a review is necessary.

(4) The second condition is that –

(a) the application is made within the permitted period,

(b) the application is made within such longer period as the Ombudsman considers appropriate in the circumstances, or

(c) the application is made on grounds alleging undue delay and the Ombudsman considers that the application has been made within a reasonable time.

(5) The third condition is that the application is made in a form approved by the Ombudsman.

(6) But the Ombudsman may not review the merits of a decision made by any person.

(7) If any of the conditions in sub-sections (3) to (5) is not met, or if the grounds of the application relate only to the merits of a decision, the Ombudsman –

(a) may not carry out a review, and

(b) must inform the applicant accordingly.”

22. “Interested party” means the Judicial Officeholder in relation to whose conduct the function is exercised, or any person who has made a complaint about the conduct in accordance with the prescribed procedures: s.110(9). Reference to the exercise of a function includes reference to a decision whether or not to exercise the function: s.110(10).
23. Sections 111 and 112 concern the process which the Ombudsman must follow when he decides that a complaint falls within his judicial control remit warrants a review (ie a full investigation):

“111. Review by the Ombudsman

(1) Where the Ombudsman is under a duty to carry out a review on any application under Section 110, he must –

(a) on the basis of any findings he makes about the grounds for the application, decide to what extent the grounds are established;

(b) decide what if any action to take under sub-sections (2) to (7).

(2) If he decides that the grounds are established to any extent, he may make recommendations to the Lord Chancellor and Lord Chief Justice.

(3) A recommendation under sub-section (2) may be for the payment of compensation.

(4) Such a recommendation must relate to the loss which appears to the Ombudsman to have been suffered by the applicant because of any failure or maladministration to which the application relates.

(5) If the Ombudsman decides that a determination made in the exercise of a function under review is unreliable because of any failure or maladministration to which the application relates, he may set aside the determination.

(6) If a determination is set aside under sub-section (5) –

(a) the prescribed procedures apply, subject to any prescribed modifications, as if the determination had not been made, and

(b) for the purpose of those procedures, any investigation or review leading to the determination is to be disregarded.

(7) Sub-section (6) is subject to any direction given by the Ombudsman under this sub-section

—

(a) for a previous investigation ordered to be taken into account to any extent; or

(b) for any investigation or review which may form part of the prescribed procedures to be undertaken, or undertaken again.

(8) This section is subject to Section 112.

112. Reports on Reviews

(1) In this section reference to the Ombudsman's response to an application are references to any findings and decisions referred to in Section 111(1).

(2) Before determining his response to an application the Ombudsman must prepare a draft for a report of the review carried out on the application.

(3) The draft report must state the Ombudsman's proposed response.

(4) The Ombudsman must submit the draft report to the Lord Chancellor and the Lord Chief Justice.

(5) If the Lord Chancellor or the Lord Chief Justice make a proposal that the Ombudsman's response to the application should be changed, the Ombudsman must consider whether or not to change it to give effect to that proposal.

(6) The Ombudsman must produce a final report that sets out —

(a) the Ombudsman's response to the application, including any change made to it to give effect to the proposal under sub-section (5),

- (b) a statement of any proposal under sub-section (5) if it is not given effect to.
- (7) The Ombudsman must send a copy of the final report to each of the Lord Chancellor and the Lord Chief Justice.
- (8) The Ombudsman must also send a copy of the final report to the applicant, but that copy must not include information –
 - (a) which relates to an identified or identifiable individual other than the applicant, and
 - (b) whose disclosure by the Ombudsman to the applicant would (apart from this sub-section) be contrary to Section 139.
- (9) Each copy must be signed by the Ombudsman.
- (10) No part of the Ombudsman’s response to an application has effect until he has complied with sub-sections (2) to (9).”

The 2014 Regulations

- 24. The Judicial Discipline (Prescribed Procedures) Regulations 2014 (“the 2014 Regulations”) were made, including under s.115 of the 2005 Act, under which the Lord Chief Justice may, with the agreement of the Lord Chancellor, make regulations providing for the procedures that are to be followed in:
 - (a) the investigation and determination of allegations by any person of misconduct by judicial officeholders, and
 - (b) reviews and investigations (including the making of applications or references) under ss.110 to 112.

By s.117 such regulations may provide for the provision of prescribed description that may be included in the regulations to be made instead by rules made by the Lord Chief Justice with the agreement of the Lord Chancellor. In the 2005 Act, “prescribed” means prescribed under such regulations or rules (s.122).
- 25. Regulation 4 provides for the designation by the Lord Chancellor of officials for the purpose of performing functions under the 2014 Regulations, to be known collectively as the JCIO.
- 26. Regulation 6 provides that a complaint about a judicial officeholder must be made to the JCIO (subject to exceptions which are not relevant to this case).
- 27. Regulation 7 provides that the Lord Chief Justice, with the agreement of the Lord Chancellor, may make rules about the process to be applied in respect of an allegation

of misconduct, whether the allegation is made by way of complaint or otherwise. Such rules may include provision as to the circumstances in which a case may be dismissed (r.7(4)(d)).

The 2014 Rules

28. The Judicial Conduct (Judicial and other Officeholders) Rules 2014 (“the 2014 Rules”) were made, including under s.115 and s.117 of the 2005 Act, and Regulation 7 of the 2014 Regulations. They provide that a complaint about judicial misconduct must be made to the JCIO (r.5) and a complaint must contain an allegation of misconduct (r.6). A complaint must be made in a “complaint document” unless the JCIO agrees to accept a complaint in another form (r.7). Rule 6(1) provides that:

“A complaint about an officeholder must be made to the [JCIO].”

Rule 6 has a heading “Complaint of Misconduct”. Rule 6 provides:

“A complaint must contain an allegation of misconduct.”

A “complaint document” is a document in writing which amongst other matters contains an allegation of misconduct on the part of a named or identifiable person holding an office listed in Regulation 3 of the 2014 Regulations (r.8(b)). Rule 20 provides that:

“A complaint must initially be considered by the [JCIO].”

Rule 21 provides that the:

“[JCIO] must dismiss a complaint or part of a complaint which falls into any of the following categories.”

One such category in r.21(b) provides:

“It is about a judicial decision or judicial case management and raises no question of misconduct.”

Where the JCIO does not dismiss a complaint under r.21 there is further provision as to the process by which it should be addressed.

The Supplementary Guidance

29. The Supplementary Guidance on the 2014 Rules includes information at Paragraph 8 regarding the Ombudsman’s role and remit:

“Section 110 of the Constitutional Reform Act 2005 provides for the subject of the disciplinary proceedings or the complainant to apply to the JACO for a review of the handling of matters involving a judicial complaint or discipline on the grounds that there has been a failure to comply with prescribed procedures, or some other maladministration. The JACO cannot comment on the merits of any decision made in respect of a particular case. However, if satisfied that the grounds of the complaint to him

are justified he may make recommendations to the Lord Chancellor and the Lord Chief Justice. If the JACO considers any decision to be unreliable as a result of maladministration he can set the decision aside and refer the matter back to the JCIO to be started afresh.”

30. The Supplementary Guidance also includes the following guidance.

Rule 6:

“The JCIO may only consider a complaint that contains an allegation of misconduct by a judge or other officeholder. Such misconduct relates to the judge’s personal behaviour, for example: a judge shouting or speaking in a sarcastic manner in court; or misuse of judicial status outside of court. It does not relate to decisions or judgments made by a judge in the course of court proceedings. The only way to challenge such matters is through the appellate process.

Where a complaint does not contain an allegation of misconduct the JCIO will advise the complainant that it cannot investigate.”

Rule 21(b):

“The constitutional independence of the judiciary means that decisions made by a judicial officeholder during the course of proceedings are made without the interference of ministers, officials or other judicial officeholders (unless they are considering the matter while sitting in their judicial capacity, for example, in an appeal hearing). Judicial decisions include, but are not limited to, the way in which proceedings are managed, disclosure of documents, what evidence should be heard and the judgment or sentence given.”

The Ombudsman’s Guidance

31. The Ombudsman’s published Guidance, “How to Complain about the Judicial Conduct Investigation Process” (“the Ombudsman’s Guidance”), states at Page 4:

“If you feel that the JCIO ... has failed to handle your complaint properly or fairly, the Ombudsman may be able to help you.”

That Guidance further states at Page 6:

“The Ombudsman cannot consider your complaint if:

- it is about a judge’s conduct and you have not complained to a first-tier body. Complaints about judicial officeholders conduct must be made to the JCIO ...
- your complaint is about a judicial decision. You could consider seeking legal advice about whether you can appeal to a higher

court. If you cannot afford a solicitor you should contact a Citizens Advice Bureau or your local Law Centre;

- your complaints is made about a decision made by the JCIO ... The Ombudsman can only consider the processes that these bodies have followed.”

32. The Guidance makes clear that the Ombudsman cannot re-open a Court or Tribunal case (Page 9). The Question and Answer section at Pages 10 and 11 states:

“What sort of complaints can the Ombudsman look at?

The Ombudsman can look at whether the JCIO ... has failed to handle your complaint to them properly. The Ombudsman will need you to give a clear explanation of what the body you are complaining about did wrong.

The JCIO ... dismissed my complaint because they said it related to a judicial decision-making. Can the Ombudsman look at this?

Yes. The Ombudsman can look at whether the JCIO ... followed the correct processes in reaching their decision to dismiss your complaint. However, he cannot comment on whether their decision was correct or not.

Can the Ombudsman reinvestigate my complaint about a judge’s behaviour?

No. The Ombudsman has no legal power to investigate complaints about the personal conduct of judges. This is the role of the JCIO ... He can only consider whether the JCIO ... handled your complaint to them correctly.

Can the Ombudsman review the decision that the judge made in my case?

No. The Ombudsman has no legal power to review a judge’s decision.”

33. Ms Lonsdale has sought judicial review of the Ombudsman’s rejection on 26 February 2018 of her complaint about the conduct of Briggs LJ. She seeks the quashing of the Ombudsman’s decision and a direction that it be considered afresh in accordance with guidance from the Court on the law. Alternatively, she seeks a declaration of incompatibility with the Human Rights Act (Articles 6, 8, 13 and 14) and the ECHR. A Statement of Grounds asserted:

“(1) The final paragraph of the attachment to his report revealed that the [JCIO] operates an unlawful and discriminatory policy which discriminates against those who are complaining against Judges who sit in the Court of Appeal, from whom there is either no right of appeal

or no effective right of appeal. The Ombudsman has wholly failed to address this issue. The Ombudsman's office has revealed that where there is a right of appeal and the appellate Court comments adversely in relation to the Judge below, that the JCIO will consider the complaint. Thus, the JCIO abdicates the first decision on conduct to the appellate Court but then entertains the matter. But where there is no right of appeal, or no effective appeal, and where a review of the Judge's conduct by the JCIO is imperative, the JCIO takes no action. This reveals that complainants to the JCIO in relation to, for example, High Court Judges, obtain the protection of a right of appeal and this subsequent review by the JCIO, whereas complaints to the JCIO in relation to the Court of Appeal Judges where there is no right of appeal, or no effective right of appeal, the complainants have no remedy. The JCIO is acting unlawfully in relation to those complaints and has acted unlawfully in relation to the Claimant in this case. It is imperative to consider the conduct of a Judge of the Court of Appeal from whom there is no right of appeal. The rule of law is defeated by a Judge who can fabricate grounds for dismissing an appeal for which there is no truth, as Briggs LJ has done in this case, and then, when evidence is put before the Court under CPR 52.30 to show his wrongdoing, failed to recuse himself and sit as a Judge in his own cause, so as to dismiss the application so that his wrongdoing is not subject to scrutiny by another under CPR 52.30, is not open to appeal, is not challenge before the JCIO.

(2) The matters complained of in relation to Briggs LJ are matters of conduct, which were in breach of Articles 6, 8, 13 and 14 of the [ECHR] and required consideration by the JCIO and the Ombudsman should have so held but misdirected himself.”

34. The Statement of Grounds then states:

“(3) Alternatively, if Points (1) and (2) are not upheld the Claimant seeks a declaration of incompatibility with the Human Rights Act and the European Convention on Human Rights, since there is no effective remedy in UK law for this Applicant and many others and such applicants are deprived of the right of a fair hearing and their property in financing litigation and can be subject to discrimination, without any recourse in UK law.”

35. The Statement of Facts relied upon by Ms Lonsdale include a number of contentions which she had been making:

- (1) About Briggs LJ's decision (on 25 October 2016) which she states showed that he did not act impartially, independently or fairly (her challenges to his grounds for refusing permission, which she says he could not have held honestly, and involved her challenge to a misapprehension in the judgment that in 2000 there was only the need to nominate lay (panel) members).
 - (2) Briggs LJ's depriving her of opportunity to make points orally and discrimination against her by reason of her age, sex and retired status.
 - (3) The want of a right of appeal to the Supreme Court and the contention that despite the facts relied upon in her application under CPR 52.30 his then failure to recuse himself, his sitting as a Judge in his own cause and dismissing an application making more discriminatory remarks about Ms Lonsdale and her status (on 22 June 2017): she contends there was no effective independent impartial determination by the Court of Appeal by reason of the conduct of Briggs LJ and no right of further appeal.
 - (4) The toll on her of the matters that had happened to her since 2007 and her further contention that Briggs LJ defeated justice by his conduct, leaving her with no other judicial recourse.
 - (5) She repeats her contention that for the reasons stated in her Grounds the Ombudsman misdirected himself and alternatively she seeks a declaration of incompatibility since she has been denied a remedy at every stage.
36. Summary Grounds of Resistance were dated 25 July 2018. The contentions for the Ombudsman included:
- (1) There is nothing in the Claimant's Claim Form that argues that the Ombudsman failed to follow the steps required by ss.110-112 of the 2005 Act or that the Ombudsman did not consider items in the complaint to him.
 - (2) The claim rested on a flawed understanding of the Ombudsman's function and remit and his ability only to consider whether JCIO complied with the prescribed procedures or whether there was some other maladministration (s.110(1) of the 2005 Act) and the prohibition in s.110(6) of the Ombudsman from reviewing the merits of the decision made by the person - whether the Judge in question or the JCIO.
 - (3) The Ombudsman conducted a review of the JCIO's approach including that an appropriate process had been followed and there was no maladministration and it was not for the Ombudsman to question the decision-making of the JCIO or that of Briggs LJ.
 - (4) The JCIO asked itself the correct question having regard to the legal framework; in particular, r.6 of the 2014 Rules which provides that a complaint "must contain an allegation of misconduct" and that the JCIO "must dismiss" a complaint which "is about a judicial decision or judicial case management and raises no question of misconduct" (r.21(b)).
 - (5) There was no basis for criticising the way in which the JCIO went about investigating the misconduct issue. It was not for the Ombudsman to substitute his own answer in place of that reached by the JCIO which is what the Claimant had invited him to do.
 - (6) It was not part of the Ombudsman's function to make a ruling on (i) whether the JCIO's answers to the misconduct issue disclosed "an unlawful and discriminatory policy" or (ii) whether Briggs LJ's conduct had violated the Claimant's rights under Articles 6, 8, 13 and 14 ECHR.

- (7) The Ombudsman had appropriately and lawfully addressed Ms Lonsdale's complaint that there was no right of appeal against a CPR 52.30 decision.
- (8) Ms Lonsdale did not identify any legislative provision which is said to be incompatible with Convention rights.

37. On 1 August 2018 Ms Lonsdale filed a Skeleton Argument. The Argument begins:

“1. By this application the Claimant seeks to raise points of law on the provisions governing the entertainment of complaints to the [JCIO] and the review of the determination of such complaint by the [Ombudsman]. In summary, the Claimant submits that each body has misdirected itself in law and, as a result, the [Ombudsman] has arrived at the wrong conclusion.”

At Paragraph 5 she refers to her six separate grounds on 15 September 2017 for alleging misconduct against Briggs LJ. She contends that the central issue in her case is whether one or more of the six grounds of complaint is a complaint of judicial misconduct and whether she was entitled to a remedy by way of investigation. Under Paragraph 9 of her Skeleton she re-makes her six grounds of complaint against Briggs LJ. At Paragraph 10 she contends she has the right to an effective remedy against the Judge in accordance with Articles 13 and 17 of the ECHR and that if she did not have an effective remedy under the 2005 Act and associated regulations her human rights had been defeated, hence her seeking the declaration of incompatibility. At Paragraphs 10 to 28 Ms Lonsdale sets out criticisms of the JCIO and in particular its purported rejection in accordance with r.8 of the complaint as not containing an allegation of misconduct. At Paragraphs 32 to 42 she sets out her submissions against the Ombudsman. Those include that the Ombudsman had confirmed the JCIO had erred in law and there was maladministration given that there had been an allegation of misconduct and thus r.8 could not therefore apply. She submits that r.21(b) also could not have been deployed against her to dismiss her claim since her claim did raise a question of misconduct. She alleges that the Ombudsman was wrong to assert that her complaint to the JCIO was not supported by any evidence of misconduct. Further, she reiterates her complaint that the last paragraph, Paragraph 58, of the report to the Ombudsman of the investigating officer observes:

“The JCIO has previously told this office that the principle of judicial independence precludes it from reviewing judicial decisions and judicial case management and if a case is considered at a superior court and that court is critical of the lower court's behaviour in applying the law the question of misconduct might arise. However, in this instance Mrs Lonsdale suggested that she did not have the scope to pursue such an appeal.”

Ms Lonsdale complains the Ombudsman did not address that issue.

38. For the hearing before me Mr Davidson QC prepared a detailed Skeleton Argument. I consider that Argument as amplified by Mr Davidson in oral argument before me. His

argument refined and synthesised Ms Lonsdale's earlier arguments in support of her case that her judicial review claim is arguable. Mr Davidson QC stresses that her argument has nothing to do with the underlying merit of the complaint against the Judge.

39. Paragraph 2 of Mr Davidson QC's argument summarises core questions for me as follows:

“(a) Did the Ombudsman handle properly the Claimant's complaint against JCIO?

On the facts of this case, this inevitably involves considering:

(b) Whether it is rationally possible to deny the allegations of hostile, misogynistic and discriminatory behaviour by a Judge towards a litigant are allegations of misconduct.

(c) Do the Ombudsman and JCIO correctly identify the distinction between:

(i) the making of a judicial decision (which is accepted is a matter outside their purview); and

(ii) the conduct of the Judge in the course of decision-making activities.

And, if not:

(d) Is that in the case of the JCIO, because of some failure with process or maladministration about which, if acting appropriately, the Ombudsman should have intervened?

And, if so:

(e) Was the Ombudsman acting irrationally?”

40. Mr Davidson QC argues that the matter is intimately concerned with r.21(b) of the Rules applicable to the JCIO. Ms Lonsdale's case for judicial review is that the Ombudsman did indeed act irrationally and, on this application, that her case is arguable and should go forward to a judicial review.

41. Mr Davidson QC cites to me the decision of Andrews J in *The Queen (on the application of David Rapp) v. The Parliamentary and Health Service Ombudsman* [2015] EWHC 1344 (Admin) in which the Office of Qualifications and Examinations Regulation (“OFQUAL”) was an interested (and represented) party. Mr Davidson contends that the Ombudsman in Ms Lonsdale's case is appointed under a different statute and that this case relates to a particular statute, but the role of the Court can, Mr Davidson submits, hardly differ materially as regards understanding what is meant by “maladministration”. Andrews J said the following:

“37. ‘Maladministration’ is not defined by the 1967 Act. It will cover ‘bias, neglect, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness and so on.’ The list is open-ended, but the type of behaviour that qualifies concerns the manner in which a decision is reached or a discretion is exercised rather than the merits of that decision or the discretion itself ...

38. I was referred to a number of cases as to the nature and ambit of the role of the Ombudsman ... The following general propositions can be extracted from that body of case law:

- (i) The Ombudsman has no duty determine questions of law. He/she is not acting as a surrogate of the Court in determining whether there has been unlawful conduct but rather, investigating a complaint of maladministration under the powers conferred on him/her by statute.
- (ii) Maladministration is a different concept from unlawfulness; consequently in determining whether the conduct complained of amounted to maladministration, the Ombudsman is not constrained by the legal principles which would apply if they were determining whether that conduct was unlawful.
- (iii) Unlawfulness is neither a precondition of nor concomitant to a finding of maladministration, there may be maladministration without unlawfulness, and vice versa.
- (iv) Even if, with the benefit of hindsight, it might seem obvious that the public body got something wrong, the Ombudsman must look at the question of maladministration on the basis of the information that the public body has at the relevant time and not with the benefit of hindsight.
- (v) It is for the Ombudsman to decide and explain what standard he or she is going to apply in determining whether there was maladministration or whether there was failure to adhere to that standard, and what the consequences are; that standard will not be interfered with by a Court unless it reflects an unreasonable approach.

- (vi) However the Court *will* interfere if the Ombudsman fails to apply standard they say that they are applying.
- (vii) The question of whether any given set of facts amounts to maladministration or causes injustice to a complainant is a matter for the Ombudsman alone. Whatever he may think about the conclusion reached, and even if he fundamentally agrees with that conclusion, the Court may not usurp the statutory function of the Ombudsman and it can only interfere if the decision reached was irrational.
- (viii) An Ombudsman's report should be read fairly, as a whole, and should not be subject to the hypercritical analysis nor construed as if it were a statute or a contract.

39. Therefore, even if what the relevant public body (in this case OFQUAL) did or said turns out with hindsight to have been based on a misunderstanding of the law, it will not necessarily lead to a finding of maladministration by the Ombudsman, especially if the legal issue is not entirely straightforward and the mistake was a understandable one for a layman to have made.”

42. In relation to the JCIO, Mr Davidson QC submits that it is not concerned with the judicial decisions “as such”, but is concerned with complaints about judicial conduct, including in-Court conduct. He submits that a complaint can only be entertained if it contains an allegation of misconduct (r.6) (whose effect is carried over into r.8, about the complaint form, and r.21). He cites r.21(b) as one of the circumstances in which the JCIO is required to dismiss a complaint. (Rule 21(b) reads it is ‘about a judicial decision or judicial case management, and raises no question of misconduct’.) In relation to the Ombudsman he cites s.62(1) of the 2005 Act and s.110 which says when he has to conduct a review (s.110(2)) and what he may not do (s.110(6) and (7)). He cites the Ombudsman’s website saying:

“We investigate ... the handling of complaints involving judicial discipline or conduct ...”

He refers me to s.111(5):

“If the Ombudsman decides that a determination made in the exercise of a function under review is unreliable because of any failure or maladministration to which the application relates he may set aside the determination.”

Mr Davidson QC submits that r.21(b) recognises that in the course of reaching or providing a decision a Judge may commit misconduct. He contends that the decision may be right or wrong, but regardless of that, if there is misconduct there is misconduct. He contends that for a complaint to be dismissed under r.21(b) two conditions must be satisfied:

- a judicial decision or judicial case management, and
- which raises no question of misconduct.

43. Mr Davidson QC cites to me the decision in *Howell v. Lees Millais* [2007] EWCA Civ 720 which involved a successful appeal against a refusal by a Judge to recuse himself (from hearing an application by trustees, one of whom was a member of the firm with whom the learned Judge had had recent negotiations). At Paragraphs 4 to 9 of the judgment of Sir Anthony Clarke (then) MR, he set out the principles applying to a case of apparent bias. Mr Davidson QC submits that actual bias would be misconduct, but in his reliance on *Howell* suggests that a failure to deal appropriately with a risk of apparent bias would also be a high risk area for judicial misconduct.
44. Mr Davidson QC submits that it is essential that all JCIO personnel who consider complaints should understand r.21(b) correctly; that is that both conditions must exist for a complaint to be dismissed under it. He stresses the need for such personnel to have a grasp of the conduct or misconduct.
45. Mr Davidson notes in respect of the JCIO Annual Report 2016-7 and its distinction between complaints which are “rejected” and those which are dismissed under r.21. He referred to cases reported to have been “rejected - complaint does not contain an allegation of misconduct on the part of a named person holding judicial office” and complaints cases reported to have been dismissed as “... about a judicial decision or judicial case management error [raising] no question of misconduct.” And there are other cases dismissed under other paragraphs of r.21. Other cases appear to have been “rejected” outside of r.21.
46. Mr Davidson QC refers to the JCIO decision being on the basis that:

“The complaint did not involve an allegation of misconduct”

and later going on to say it was about a judicial decision. He submits that the Ombudsman should have found a failure to follow prescribed process and/or maladministration in that the first condition in r.21(b) was not met and that even if it was (ii) the second condition in r.21(b), that the complaints did not include an allegation of misconduct, was not met. He submits that the Ombudsman irrationally failed to understand the failure of the JCIO.
47. Mr Davidson QC submits on behalf of Ms Lonsdale:
 - (1) Her contention that Briggs LJ was dishonest in ruling against her is a complaint of misconduct.
 - (2) She submits that the omission of Briggs LJ to recuse himself under r.52(30) was biased and created a situation of bias in addressing that application is an allegation of misconduct.

- (3) The complaint of unfavourable treatment as a woman, a person of his own age and a retiree (a discrimination claim) was a complaint of misconduct.
48. In submitting the judicial review should be permitted, Mr Davidson QC makes a number of points:
- (1) The importance of the JCIO and its meeting the need to promote public confidence by reason of the complaint system.
 - (2) The importance of r.21(b) being applied correctly and correctly understood by the JCIO if dismissing a complaint.
 - (3) The JCIO staff do not understand r.21(b) or its role correctly. Such would be a maladministration. Similarly it will be a matter of incompetence and the failure to understand a point which is fundamental to JCIO's operation.
 - (4) The need for complainants (in particular, losing litigants) to be able to distinguish decisions from conduct.
 - (5) Ms Lonsdale's submissions to the JCIO as then a litigant in person might be criticised but contains clear allegations of misconduct, and given such patent allegations it should have been obvious that there had been a failure of process and/or maladministration and that the only rational course open to the Ombudsman was to uphold the complaint against the JCIO and require reconsideration.
49. In his Skeleton Argument Mr Davidson QC refers by way of example to complaint 6 that the Judge "acted in a hostile, misogynistic and discriminatory manner towards me" as being a specific complaint about behaviour. The JCIO letter referred simply to the words "hostile" and "discriminatory" but did not refer to misogynistic (oddly). He contends that the opinion of the case worker was that it was not misconduct for a Judge to act in a hostile way towards a litigant and it is not misconduct to act in a discriminatory manner. He suggests that something had gone very badly wrong and obviously wrong for the case worker to write that "Your complaint does not contain an allegation of misconduct." He submits that the case worker's work was plainly incompetent and/or the result of inadequate training and/or supervision. He contends that the rest of the sentence referring to the complaint being "about the Judge's decision-making" and is therefore "rejected" entirely misses the point. Rule 21(b) contained two conditions and what happens in the course of decision-making can be misconduct. He contends that it would be irrational for a reader of the JCIO letter to fail to recognise such failure of process or administration.
50. In relation to the Ombudsman, he complains in relation to Paragraph 16 of the Ombudsman's decision:
- (1) It is not logical to assert that "the allegations, including that Briggs LJ has discriminated against her because he was male and she was female and because he was wealthy and she was not, related to judicial decision and judicial case management."
 - (2) The assertion that her allegations "were not supported by an [sic] evidence on which the JCIO could rely" was wrong and inapposite. He contends that that assertion is wrong and inapposite given, for example, the complaint that "The Judge acted in a hostile, misogynistic and discriminatory manner towards me." But even if that were right, he argues the decision to reject for want of evidence would have been under r.21(a), (e) or (g) which had not been considered appropriate by the JCIO and the JCIO could not have dismissed on those grounds

because before doing so it would have had to have given Ms Lonsdale an opportunity to provide adequate details under r.22.

51. Mr Davidson QC's final submission is that this case is an important one about an important system.
52. By his Skeleton Argument, Mr Steele refers first to the Summary Grounds of Resistance reasons and the Order of 7 September 2018 of Mr Howell QC sitting as a Deputy High Court Judge. In response to the way in which Mr Davidson QC has put the argument, he makes these points.
53. At the outset, Mr Steele refers to:
 - (1) The starting point is that the Ombudsman's statutory function is limited to reviewing the JCIO's investigation process to ascertain whether there had been a failure to comply with prescribed procedures (ie the 2014 Regulations and 2014 Rules); or (b) some other maladministration (s.110(1) of the 2005 Act).
 - (2) The Ombudsman "may not review the merits of a decision made by any person (2005 Act, s.110(6)). He submits that that reinforces the limited ambit of the Ombudsman's role in expressly forbidding him from reviewing the merits of any decision of the JCIO or an order of the Judge who is the subject of complaint.
54. Mr Steele next submits that the rejection of the complaint was under r.8 and that the JCIO did not need to address r.21 on which Mr Davidson QC focused. Mr Steele submits that the Ombudsman is entitled to conclude the JCIO had followed an appropriate process:
 - (1) The JCIO acknowledged the allegations and summarised them in its response dated 10 October 2017 and that whilst it did not specifically refer to the allegation of misogyny to the extent that that was a form of discrimination it appropriately identified the concern in broad terms.
 - (2) The JCIO correctly identified the issue under r.8 as being whether the complaint contained an allegation of misconduct. The JCIO approached that issue by applying the distinction identified in the Supplementary Guidance on the 2014 Rules that:

"Misconduct relates to the judge's personal behaviour, for example, a judge shouting or speaking in a sarcastic manner in court; or misuse of judicial status out of court"

but:

"does not relate to decisions or judgments made by the judge in the course of court proceedings. The only way to challenge such matters is through the appellate process."
 - (3) The JCIO explained why the Claimant's concerns could not be investigated. In particular, it referred to the constitutional independence to the judiciary and the

freedom of Judges to decide what evidence they wished to consider and the weight that should be applied to that evidence. This was consistent with the information provided by JCIO on its website about what it could and could not consider. Mr Steele goes on to say that the Ombudsman was entitled to conclude that there was no basis for criticising the way in which the JCIO went about investigating the misconduct issue and reaching its decision. It was not for the Ombudsman to substitute his own answer in place of that reached by the JCIO.

55. Mr Steele submits that to avoid the s.110(6) prohibition it is argued for Ms Lonsdale that there should be an expansive approach to the two permissible grounds of enquiry under s.110(1). However, he contends that such approach would collapse the carefully drawn distinctions between (i) the issue of compliance with the prescribed procedures and maladministration, and (ii) the issues of the merits of JCIO or judicial decision. He submits that as to the first ground in s.110(1) a complainant's disagreement with the JCIO's decision under r.8 does not constitute a relevant "failure to comply with the prescribed procedures" in respect of which the Ombudsman can intervene. Such he submits would render the s.110(6) prohibition meaningless. The focus, he contends, must be on whether the JCIO followed an appropriate procedure and asked itself the right questions, not whether it went on to reach what the Ombudsman considers to be the right answer. Mr Steele then goes on as to the second ground in s.110(1) ("some other maladministration"). He contends that again such is not a mandate for the Ombudsman to substitute his own decision for that of the JCIO. In regard to *Rapp*, he relies on confirmation that maladministration concerns "the manner in which a decision is reached or discretion is exercised" rather than the merits of that decision or of the discretion itself (Paragraph 37) and that an Ombudsman "has no duty to determine questions of law"; "maladministration is a different concept from unlawfulness: unlawfulness is neither a precondition of nor concomitant with a finding of maladministration, there may be maladministration without unlawfulness and vice versa" (Paragraph 38). He contends it was not for the Ombudsman to act like the Administrative Court by making a ruling on the correct interpretation in law of the 2014 Rules. He goes on to cite Ms Lonsdale stating by email on 11 October 2017, "My complaint against the JCIO is that they erred in law in dismissing my complaint under Rule 8 and I am not at all sure from what you say the Ombudsman has a remit to consider that issue." She also put the JCIO on notice that unless it re-opened her complaint "I intend to make application for judicial review of the JCIO's decision." He contends that Ms Lonsdale chose to complaint to the Ombudsman despite being fully aware of his limited remit. He submits that should be the end of the case and that this Court should not need to go on to consider the Claimant's arguments about the correct interpretation in law of the 2014 Rules.
56. Mr Steele goes on to contend that even if this were a judicial review of the JCIO rather than the Ombudsman her argument about the correct interpretation of the law of the 2014 Rules would not avail her. In relation to the submission for Ms Lonsdale that r.21(b) is both about a judicial decision and raises no question of misconduct means that a complaint about "a judicial decision that may nevertheless raise a question of misconduct," he cites the principle of r.21(b) identified in the Supplementary Guidance (which has already been cited by me). He therefore submits that the JCIO could not make a finding of misconduct where to do so would expressly or by necessary implication involve expressing a view on the merits of a judicial decision, a distinction

which r.21(b) is intended to reflect. In *Hammersmith and Fulham LB v. JCIO* [2016] EWHC 2849 at para.1.4 Soole J observed:

“The underlying purpose of that constraint [ie r.21(b)] is of course to protect judicial independence in decision-making as further confirmed by the [2005 Act].”

Mr Steele points out that the position is different if a High Court has already criticised a Judge’s decision-making since the JCIO can then take the High Court’s finding as read and would not itself have to express any view on the merits of the Judge’s decision. He observed that a Judge who has called one of the parties or witnesses an offensive name in his judgment could potentially be found guilty of misconduct in the same way as a Judge who verbally called someone an offensive name during the course of a hearing. For the JCIO to investigate such matters would not cross the line between judicial conduct and interference with judicial decisions. He makes the point that by contrast Ms Lonsdale’s complaints necessarily involved asking the JCIO to examine and find fault with Briggs LJ’s reasons for his decisions which crosses what he calls an important line. He points out in relation first to the allegation that Briggs LJ “acted in a hostile, misogynistic and discriminatory manner towards me” does not suggest any such language having been used. Ms Lonsdale has said that what the Judge did was “repeatedly dismiss what I say for discriminatory reasons which have no basis in law and (ii) said that because I am retired from the Bar I am not entitled to a remedy or justice.” Such, Mr Steele contends, is a direct challenge to the Judge’s reasons for his decision to refuse permission to appeal. At Section 22 of his judgment he held there was no other compelling reason why the appeal should be heard since the Claimant “received the mildest sentence for a breach of the Public Access Rules and has, in any event, long since ceased to practice as a barrister.” He refers also to Paragraphs 4 to 6 of Briggs LJ’s Order refusing the application under CPR 52.30 to re-open the appeal. He submits that, as the Ombudsman noted, Ms Lonsdale’s allegations are not supported by any evidence on which the JCIO could rely - i.e. a finding of a higher Court. Absent such a finding, it would have been constitutionally improper for the JCIO to express a view about Briggs LJ’s reasons for his judicial decision.

57. Next, Mr Steele addresses the allegation that Briggs LJ should have recused himself from the hearing of the application under CPR 52.30. That, submits Mr Steele, is a direct challenge to Briggs LJ’s judgment that he could properly continue to hear the case. Again, the allegations were not supported by any finding of a higher Court. By contrast, in the *Howell* case the Judge had already been criticised by the Court of Appeal for not recusing himself and his conduct at the hearing. Investigating the Judge’s conduct in relation to the recusal application would cross the line between oversight of judicial conduct and interference with judicial decisions.
58. Mr Steele submits thirdly in regard to the allegations that Briggs LJ made up three grounds for dismissing the application for permission to appeal which were untrue and “his judgment was untrue” that such are direct challenges to the merits of Briggs LJ’s decision. He submits that one cannot circumvent the prohibition on the JCIO interfering with the merits of judicial decisions by asserting the Judge was “dishonest” in his reasons. Mr Steele finally cites from the decision of Soole J in the *Hammersmith and Fulham LB v. JCIO* case where he contrasted the allegation that the relevant Coroner had breached the Coroner’s Rules by not holding hearings in public which is “prima facie the consequence of a judicial decision which falls outside the remit of the

JCIO” and “a potential allegation which the Claimants disavow making that the Coroner had falsified records at the time of the hearings which would be a matter of misconduct”. The Claimant could not transform his complaint into one of misconduct by making “assertions of knowing breach of rules, impropriety or want of probity for which no further support is provided than the suggested inference.”

Discussion

59. Under s.110(1) of the 2005 Act, the Ombudsman can review a JCIO decision on application by the Interested Party contending that there has been:
 - (a) A failure to comply with prescribed procedures; or
 - (b) Some other maladministration.
60. Prescribed procedures are derived by the JCIO from the 2014 Rules.
61. The JCIO can deal with a complaint containing an allegation of misconduct (r.6).
62. It must be set out in a “complaint document” (r.8(b)).
63. In this case the JCIO proceeded to deal on 10 October 2017 with Ms Lonsdale’s complaint dated 15 September 2017.
64. That complaint did not assert a failure to comply with prescribed procedures.
65. The Ombudsman noted Ms Lonsdale’s complaints. For reasons he gave in Paragraphs 13 to 16 of his final report, he did not find any maladministration in the JCIO’s approach to the complaints.
66. Maladministration is not defined in the 2005 Act or under the 2014 Rules.
67. Maladministration appears to me to concern the manner in which the decision is reached rather than the merits of the decision (see Andrews J in *Rapp* at 37).
68. The Ombudsman cannot review the merits of a JCIO decision (s.110(6) of the 2005 Act). He could not, in my view, have found the JCIO wrong to have concluded Ms Lonsdale’s complaints did not constitute an allegation of misconduct or on that basis to have rejected her complaint under r.8.
69. It also appears to me that Ms Lonsdale has been seeking relief for wrongs she believes were done to her by the decisions of Briggs LJ, but it appears to me that Ms Lonsdale was correct on 11 October 2017 to question whether the Ombudsman had remit to consider the issue as to whether the JCIO erred in law in rejecting her complaint under r.8.
70. I agree with the submission of Mr Steele that disagreeing with the JCIO’s decision under r.8 is not a relevant “failure to comply with the prescribed procedures.” Reconsideration of the r.8 rejection would have been a review from which the Ombudsman was prohibited by s.110(6). Further, I agree with Mr Steele that the Ombudsman had no power to substitute his decision for that of the JCIO under r.8.

71. In short, I do not consider that Ms Lonsdale has arguable grounds to challenge the report of the Ombudsman.
72. This is not a claim to review the JCIO decision on 10 October 2017 and the JCIO has not acted as an interested party. My next observations are thus mere comments which are not relevant to my decision relating to the Ombudsman.
73. The JCIO does have to consider complaints alleging misconduct (r.6) and as set out in the complaint document (r.8(b)).
74. The complaints of the failure of Briggs LJ to recuse himself, acting in his own cause and partiality all have the problem that he was acting in context in his judicial capacity. They relate to the decision on 19 June 2017. As Mr Steele submits, there is no finding of a superior Court criticising Briggs LJ upon which the JCIO could rely. The JCIO could not properly express a view on the complaints. The JCIO's website notes that it cannot investigate complaints of bias in a Judge's decision-making.
75. The challenge to the reasons for the decision on 25 October 2016 refusing permission to appeal sets out why Ms Lonsdale argues that they were wrong. She seeks to elevate her complaints by asserting baldly that Briggs LJ knew they were wrong and was dishonest. Such would of course involve questions of the actual state of his knowledge and belief and the objective standards of ordinary people. The problem as noted by the JCIO website is that it cannot consider or investigate a Judge's decision. I agree with Mr Steele that one cannot circumscribe the inability to investigate the merits of a decision by asserting "dishonesty".
76. The complaint of failure to note submissions and finding no need to avoid real injustice informed the decision of Briggs LJ on 19 June 2017 not to re-open the appeal. But that again asked the JCIO to investigate the merits of the decision which it could not do.
77. The JCIO website does note that it can investigate "the use of racist, sexist or offensive language." Ms Lonsdale's complaint relates to reasons given on 25 October 2016 for considering under CPR 52.6(1)(b) that there was no compelling reason why the appeal should be heard. The JCIO could not in my view have investigated the reasons for that decision. As it happens, the complaint is not in terms about "language".
78. Though the complaints were rejected by the JCIO under r.8 rather than by dismissal under r.21(b), I consider Mr Davidson QC must be correct that both rules deal with or refer to complaints of misconduct. A superior Court may find a Judge has committed misconduct (*Howell*), a matter which the JCIO may then take as read.
79. But I do not consider the JCIO can investigate misconduct in the decision (absent criticism by a superior Court).
80. Reverting to Mr Davidson QC's "core questions":
 - (a) I do not consider it arguable that the Ombudsman failed to handle properly Ms Lonsdale's complaints against the JCIO.
 - (b) I do not consider the Ombudsman asserted that allegations of hostile, misogynistic and discriminatory behaviour by a Judge were not allegations of misconduct.

- (c) The Ombudsman (and if relevant the JCIO) did in my view correctly identify the distinction between (i) the making of a judicial decision and (ii) the conduct of the Judge in the course of decision-making activities.
 - (d) I do not consider there was a failure of process or maladministration about which the Ombudsman should have intervened.
 - (e) I do not consider the Ombudsman acted irrationally.
81. Mr Howell QC in refusing on 7 September 2018 permission to seek judicial review did not have the benefit of Mr Davidson QC's arguments. Nonetheless, I respectfully agree his reasons for refusal:
- (1) The problem that the Ombudsman was prohibited by s.110(6) of the 2005 Act from reviewing the merits of a decision whether by a Judge or the JCIO.
 - (2) The fact that Ms Lonsdale had no right of appeal against the decisions of Briggs LJ and so there was no judicial criticism of his behaviour, does not arguably indicate that the Ombudsman's findings that the JCIO followed an appropriate process and there had not been maladministration, were unlawful.
 - (3) The complaints of discrimination related to reasons for dismissing the application for permission to appeal (and the want of need to reopen the appeal) unarguably related to the merits of his decisions and were beyond the "purview" of the Ombudsman (or the JCIO)).
82. For the reasons I have given, I refuse permission to seek judicial review of the Ombudsman's decision on 26 February 2018 not to uphold Ms Lonsdale's complaint concerning the JCIO investigation.
83. As I indicated to Counsel, there is no need to attend the handing down of this judgment. I shall deal on paper with any submissions on costs or permission to appeal, which should be made to me within 14 days of the handing down.