

The Adjudicator's Office  
Annual Report 2003



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## Foreword by The Adjudicator Dame Barbara Mills DBE QC

I am delighted to present my Annual Report for the year to 31st March 2003. This is the fourth report covering my work as the Adjudicator but, perhaps more notably, the tenth covering the work of the office. As the Adjudicator's Office will be ten years old this year, before looking to the future, I felt that a look back over the years might be interesting.

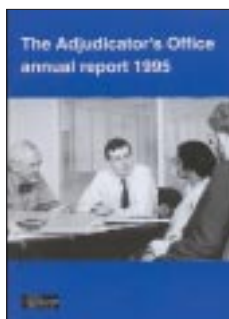
1994



The office was set up with 10 staff on 5th May 1993. My predecessor, the first Adjudicator, Elizabeth Filkin, acknowledged at the time that "the Inland Revenue made a very positive step in agreeing to set up this office and appoint an adjudicator". I wonder whether she realised then how extensively the office would grow and evolve over the coming years, or indeed how far departments would progress.

By the time of the following year's report, to March 1995, the office was already seen as offering a significant customer service and as a catalyst in helping the Inland Revenue to improve its own complaints handling. There were already "fewer cases coming to us where the issues are cut and dried", a trend which has continued, such that I rarely see cases today which are wholly straightforward. And more difficult cases inevitably take longer to resolve.

1995



Other organisations recognised the potential gains of working with the Adjudicator's Office, and my predecessor welcomed the "bold step" taken by Customs and Excise and the Contributions Agency, in joining the Inland Revenue by "opening their doors to scrutiny" that year.

But the going was far from easy for these organisations, and it was noted with some satisfaction that the Adjudicator's Office had been "awarded the maximum five 'bite marks' in a review of watchdogs by one newspaper".

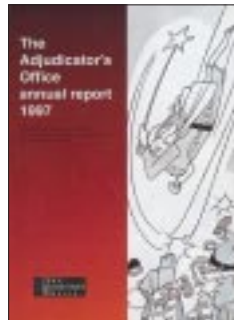
1996



Although the Inland Revenue had had a Code of Practice on redress for some time, 1996 saw a landmark when they first broadened their approach to "consider making a consolatory payment for worry and distress" caused by their mistakes. And, whilst welcoming Customs and Excise's equivalent Code, "Complaints and Putting Things Right", it was noted that there were "many cases...where Customs and Excise had made a problem worse by dealing with a complaint poorly". As for the Contributions Agency, we saw "poor complaints handling at all levels" with "much to do before they handle [complaints] well and effectively".

At that time, the Contributions Agency was separate from the Inland Revenue. Now, of course, as the National Insurance Contributions Office, it is part of the Inland Revenue. Some complaints involved both organisations, and it was recognised that, in such cases, "it made our job very much easier to be able to review all the issues together...and we were able to give complainants better customer service by dealing with both aspects of their complaint in one investigation". Today, with the Inland Revenue moving increasingly into the world of tax credits and benefits, cross-departmental issues are inevitably a more frequent occurrence.

1997



I echo my predecessor's views that the best possible customer service can only be achieved where the issues can be considered together.

By 1997, we were seeing "significant improvement...in how the Inland Revenue deals with complaints and considerable vigour in the Valuation Office Agency and Customs and Excise towards that goal". Sadly, we also reported "alarm" at the "standard of work – including complaints handling – seen from the Contributions Agency". A "staggering" 80% of complaints about them were upheld.

Concerns were being voiced about the "large increase of work" which was expected following the introduction of Self Assessment, fears which, pleasingly, have never really come to fruition.

We have always taken feedback from our customers seriously, and I am extremely pleased that we will be doing even more in the coming year to find out what our customers think and want. It has always been the case though that "we do not please all people all of the time". Elizabeth observed that she received "brickbats from time to time", a feature of the role of Adjudicator which has not changed!

1998



1997 was also noteworthy as the Adjudicator's Office went live on the Internet for the first time. Since then, our website [www.adjudicatorsoffice.gov.uk](http://www.adjudicatorsoffice.gov.uk) has, at peak times, received more than 200 hits a day.

By the fifth Annual Report, in 1998, the first five years had "seen a dramatic change in the way the organisations deal with the public". The Report was also notable as the weightiest ever produced, running to 157 pages.

Elizabeth Filkin left the office in February 1999 to become Parliamentary Commissioner for Standards. There is no doubt that, in her six years as Adjudicator, she established the office as a recognised force within the world of customer service and complaints handling, and was a major reason for the "dramatic" changes seen in departments. The Adjudicator's Office would not be what it is today without the foundations she laid.

1999



The 1999 report, covering the year to March 1999, before my appointment in April, reflected the organisations' "less defensive approach" to complaints, and again recognised that they were better at resolving complaints, with those cases being referred to this office being even more complex and time consuming. On taking over, I was immediately concerned at the time taken by this office to resolve complaints, the average age of open cases - at more than six and a half months - was simply unacceptable.

2000



I reported on my first full year as the Adjudicator to March 2000. That year had seen the Contributions Agency and the Contributions Agency of Northern Ireland merge with the Inland Revenue and quickly start to align their complaints handling processes. I was pleased to acknowledge the “huge strides” taken by what had become the National Insurance Contributions Office to improve customer service. And I made my priorities clear.

I wanted to maximise opportunities to work constructively with the organisations in learning from complaints, to use “our experiences with the few to make changes for the benefit of the many”. This was particularly so with the Inland Revenue, through its tax credits work, coming into contact with sectors of the community for whom dealings with the Inland Revenue would be a new and potentially daunting experience.

2001



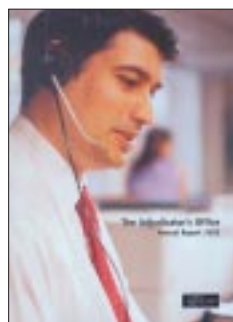
But I also wanted to streamline our own processes, and a somewhat shorter Annual Report was indicative of that more focused approach.

The report to March 2001 foreshadowed more very welcome changes to the organisations’ main codes of practice on complaints. COP1 and Notice 1000 were revised to shift the emphasis away from the gravity of a mistake to the impact on the customer, and to introduce greater flexibility to acknowledge unacceptable delays.

I must also mention the Valuation Office Agency's outstanding record in that year, with no complaints upheld; a unique achievement unparalleled before or since.

Last year, I was pleased to report for the first time that my office had no cases which were more than twelve months old. Customs and Excise complaints formed a greater proportion of our workload than ever before, up some 45% on the previous year, due in the main to their much-publicised concentration on cross-channel “smuggling”.

2002



2002 also saw the work of the office broaden for the first time since 1995. From 1st April 2001 we took on complaints about the Public Guardianship Office (PGO), an Executive Agency of the Lord Chancellor's Department.

So to the year just concluded, to March 2003. Unfortunately, we were unable to improve on the average time we took to investigate cases, which slipped to about 23 weeks. This is still too long, and I am determined to bring this down to less than 20 weeks. As long ago as 1995, there was already evidence that we were seeing fewer cases which were straightforward and thus less we could easily resolve. That trend has undoubtedly continued, which is of huge credit to the organisations, who are now so much better at resolving the vast majority of complaints themselves.

Alongside that, we have increasingly emphasised resolution by agreement – mediation – achieving almost 36% with the Inland Revenue and 32% office-wide, with a pleasing increase in Customs and Excise's cases mediated, 21%, an increase of 4% on last year. But mediation takes time. It does involve more discussion with the parties with a view to finding the common ground, but I am in no doubt that it is the best possible outcome. Nonetheless, I am optimistic that we can maintain and improve our mediation rate, whilst bringing throughput times down. Once again, we had no cases open over twelve months old at the year end, and almost 99% of cases were settled within a year.

Whilst organisations have got better and I am seeing fewer cases, paradoxically the proportion of complaints we uphold has increased. For the third consecutive year, I upheld, at over 45%, an increased proportion of complaints I saw about the Inland Revenue and a broadly comparable proportion of complaints about Customs and Excise.

I said last year that I was confident that the revised codes of practice introduced by the Inland Revenue and Customs and Excise would better equip staff in the departments to resolve complaints. Talking to those staff, I know that they feel able now to deal with cases more fairly according to the specific circumstances of a complaint, and I am far more comfortable working with the increased flexibility. I think that some further guidance to staff on the new codes is, though, overdue.

My work with the PGO is slowly increasing, as their customers are becoming more aware of my services. The PGO has continued to labour under a considerable backlog, though during this year they have made massive inroads into the accumulated work. The cases I have investigated still tend to reflect the position prior to this recovery, and I have been perturbed by what I have seen. Inevitably, with such arrears, delay was a central theme in the complaints which come to my office. So much so that, exceptionally, we decided to take on complaints about the PGO in some cases straightaway rather than await the further delay whilst the PGO looked into the complaint themselves. They have now though established a formalised complaints handling structure and better liaison arrangements with my office. I hope we have now turned the corner and that I will be able to report the evidence for next year shows a reduction in complaints upheld from this year's 67%.

I am also delighted to say that, from April 2003, we are taking on complaints about The Insolvency Service, an Executive Agency of the Department of Trade and Industry. I have been impressed by their enthusiasm to work with my office, and their achievement in having all necessary infrastructure in place by the beginning of April. Although The Insolvency Service's activities sit well with those of the other organisations with whom we already work, I look forward to an increasingly diverse workload in the year ahead.

So much for looking back, but what of the future? Having witnessed over the last eighteen months or so the confusion surrounding the various appeal routes where Customs and Excise have seized goods or vehicles, I welcome the recently announced review of these arrangements and am pleased that we have been able to contribute.

For the immediate future, we anticipate a possibly significant increase in work around new Tax Credits though, as with our concerns about Self Assessment, these fears may prove to be misplaced. Although it is too soon for complaints to have reached my office, the initial flurry of activity suggests that it may take some time for the new system to bed down, which will inevitably mean that people complain.

And whilst the new Tax Credits population is much broader than that for Working Families' Tax Credit, many of those affected may find themselves as a result in difficult financial circumstances. Moreover, the Inland Revenue is working closely alongside the Department for Work and Pensions on new Tax Credits, although the extent of their respective involvement remains unclear. I have referred above to my predecessor's comments about her handling of mixed Inland Revenue and Contributions Agency complaints. Time will tell if similar cross-departmental issues arise with new Tax Credits.

The foreword to the first Adjudicator's Office Annual Report concluded with Elizabeth Filkin paying tribute to her "outstanding team of staff". Many things have changed over the last ten years but that has remained constant, although the team has grown somewhat with over 50 staff now. Without them, there would be no Adjudicator's Office and no Adjudicator. It remains a pleasure to work with people of such commitment and calibre and to whom I once again conclude by expressing my appreciation.



*Barbara Mills*

**Dame Barbara Mills DBE QC**  
The Adjudicator

## Role of the Adjudicator's Office

With over ten years of experience behind us, we have undergone extensive change, while confidently expanding the scope of our work. We remain firmly committed to providing a service for independent complaint resolution, which is:

- objective
- considered
- accessible
- free.

Before we take on a complaint for investigation, we expect the organisation to have had an opportunity to resolve matters at a senior level. Where this has not happened, we refer the complaint back to the organisation. The complainant is invited to come back to us, if they remain dissatisfied with the outcome reached by the organisation.

We measure complaints about the organisations against their own published standards and Codes of Practice. We look to ensure that these have been followed correctly. While there are some areas that we cannot consider, such as disputes about aspects of departmental policy and matters of law, we do investigate complaints about:

- mistakes
- delays
- poor/misleading advice
- staff behaviour
- the use of discretion
- access to information under Open Government.

There is no charge to complainants for the use of the Adjudicator's services.

### The way we work

#### Stage 1 – Assistance

While most complaints reach our office by telephone, we do receive some in person or by letter and fax. We have also seen an increase in the number of people who prefer to deal with us by email, though security of information on the internet may be a concern.

In all cases, our Assistance Team is the first point of contact for the public. Their role is to ensure that the organisation has had the opportunity to consider the complaint properly and that it concerns a matter within our remit.

Once the Assistance Team is satisfied that we can take a case on, they will ask the relevant organisation for a full report about the complaint, together with their files and papers. When we have received this information, the case is passed to an Adjudication Officer to start their investigation.



## Stage 2 – Investigation

We try to resolve complaints by one of two methods:

- mediation
- recommendation letter from the Adjudicator.

Mediating a settlement between the complainant and the organisation is our preferred method for resolving complaints. We consider that the mediation process, involving comprehensive discussion of the issues behind the complaint with both parties, offers greater value to all concerned. Our experience in this field enables us to judge offers of redress, whether in the form of apology or compensation, realistically and sensibly.

Sometimes it is not possible for us to match a complainant's expectations with the organisation's offer of redress. Where this happens, the Adjudicator will look at the case in detail and reach a decision on how the complaint should be resolved.

Once she has reached her decision, the Adjudicator sets out her views in a formal letter, which is sent to the complainant and copied to the organisation. We call these letters recommendation letters because they set out what, if anything, the Adjudicator recommends the organisation should do to resolve matters.

In the ten years since we began our work, the organisations have accepted all of the Adjudicator's recommendations.

## Working with the organisations

An increasingly important aspect of our work is to help the organisations improve their service to the public. While it is important for us to remain independent of the organisations, we recognise that our recommendations often have an effect beyond any single complaint. To ensure that mistakes are not repeated and that lessons are learned, we carefully monitor our results, identifying trends and particular areas of concern. We feed this information back to the organisations, prompting them to make improvements to their service.

### **Codes of Practice**

Over the last ten years, we have seen great improvements in the organisations' approach to complaints about their service. We have provided advice on how to improve their procedures and, with our help and support, all of the organisations with whom we work now have in place comprehensive and consistent policies on how they go about sorting out problems arising from their mistakes or delays:

- The Inland Revenue's Code of Practice 1 – Putting things right when we make mistakes
- The Valuation Office Agency – Putting things right for you
- Customs and Excise's Notice 1000 – Complaints and putting things right
- The Public Guardianship Office – Complaints – Putting things right if things go wrong
- The Insolvency Service – Complaints Procedure – Information on making a complaint

To help people who may wish to complain about these organisations, we also publish our own series of leaflets:

- How to complain about the Inland Revenue and Valuation Office Agency (A01)
- How to complain about Customs and Excise (A02)
- How to complain about the Public Guardianship Office (A05)
- How to complain about The Insolvency Service (A06)
- Meetings with the Adjudicator's Office: Notes for people making complaints (A03)

## How was it for you?

We want complainants to receive a swift, efficient and easy to understand service when they deal with us. To help us to achieve this, we ask them about our service when we have completed our investigation.

Based on some of the feedback that we received during this year, our customers' experience highlights three key factors in the process:

- Making contact with us
- How long we take and
- The outcome.

*"... good to know such a service exists"*

### Making contact with us

In most of the cases that we investigate, the organisation has advised the complainant to contact us because their own efforts to put things right to the complainant's satisfaction have failed. This is often the first time that the complainant becomes aware of what we do.

To help publicise our service, we produce a range of "How to complain about..." leaflets, covering all of the organisations that we investigate.

*"[Your leaflet] is clear and gives simple directions to anyone wishing to use the Adjudicator's Office".*

As well as explaining how to complain about the various organisations, the leaflets detail the role of the office and set out what we can and cannot investigate. Some people would like to see more:

*"[Your leaflet How to complain about the Inland Revenue and Valuation Office Agency] needs a chapter explaining in words of one syllable the tax system!"*

Our leaflets would run to several volumes if we tried to achieve this! Our role is to ensure that the organisations are adhering properly to their own instructions and published standards, and that people who want to complain can find out how to do so with confidence.

It is not just unrepresented individuals who want to complain. So as well as our range of leaflets, our work is often referred to in professional publications. We also have a website where, among other things, our publications, including previous Annual Reports, can be viewed. And we provide stands at exhibitions and speakers at conferences and seminars.



## How long we take

We recognise how important it is for people to have their complaint looked at quickly, especially if they are already complaining about things taking too long. And we appreciate that we cannot always match expectations:

*“A ridiculously long process”*

But we try to balance the time taken against what can sometimes be extensive in-depth enquiries:

*“The thoroughness of your investigation was excellent”*

We pride ourselves on carrying out full and impartial investigations, based solely on the facts of the case. This year, on average, our investigations took about five months to complete, but we are determined to find ways to speed things up. We already deal with some of the simpler cases within a very short while of getting the report and papers from the organisations.

*“The time it took your office to bring our complaint to a satisfactory conclusion was a breath of fresh air”*

A key achievement of this office in the last four years has been to eliminate almost completely the number of cases that take us more than twelve months to investigate. For the coming year, we expect to close more than 98% of cases in less than a year.

## The outcome

Of course, our conclusions are probably what matter most to complainants, and we cannot please everybody:

*“Nice people, shame about the result”*

This year, we partially or substantially upheld 45% of the complaints that we investigated. But we understand how disappointing it can be if we do not uphold a complaint:

*“I think your office should be shut down as you are a waste of money”*

Not all complainants want financial redress, but money is often a factor in determining satisfaction. Most complainants have realistic expectations concerning the amounts of compensation that the organisations can pay, in accordance with their Codes of Practice, when things have gone wrong. Because these payments are made, without any legal obligation, from public funds, they can never be seen in the same light as commercial payments, or payments for damages awarded in a court of law. We try to manage carefully complainants' expectations about financial redress, but sometimes these expectations are unrealistic, and the complainant will invariably be dissatisfied with the end result.

*"[Your office] was bound in its decisions by the Inland Revenue's Code of Practice"*

The organisations' Codes of Practice and internal instructions are the standards against which the services of the organisations are judged. Our role is to decide whether or not they have applied these standards and instructions properly and fairly, and whether the way they have sought to resolve a complaint, and any redress offered, is reasonable.

*"I believe the Adjudicator's service is very fair and just"*

## The future

In the coming year, we will look at more sophisticated methods of gathering customer feedback. We are working with a leading independent market research company to consider options such as telephone surveys with willing customers. We will continue to find out more about the sort of service our customers want and ensure we understand what is important for them in trying to improve our service for the future.

## Inland Revenue

The Inland Revenue are the Government department responsible for calculating and collecting taxes such as Income Tax, Corporation Tax, Capital Gains Tax and Inheritance Tax, and for the collection and recording of National Insurance contributions. They also administer new Tax Credits and Child Benefit and have responsibility for enforcing certain aspects of the National Minimum Wage law on behalf of the Department of Trade and Industry. In addition, they are responsible for collecting the majority of income contingent Student Loans.

Over the past ten years, the Inland Revenue have undergone significant change, both in terms of the way in which the organisation is structured and, more fundamentally, the nature of the work that is undertaken.

### Complaints about the Inland Revenue



The Inland Revenue's Code of Practice 1 - *Putting things right when we make mistakes.*

In our last Annual Report, we identified that, although the number of Inland Revenue cases coming to this office had decreased, the proportion that were either wholly or partially upheld had increased. This trend has continued as we took on 8% fewer cases for investigation this year, of which just over 45% were either wholly or partially upheld, a 6% increase over the previous year.

This year, we successfully mediated 36% of cases that we investigated, an increase of 6% over last year. Mediation requires flexibility on all sides. The increase in cases resolved by mediation reflects greater willingness on behalf of the Inland Revenue to look at things objectively, offering a wider range of appropriate solutions.

We are pleased to see the Inland Revenue taking an increasingly pragmatic approach to the handling of complaints, in line with their Code of Practice 1 - "Putting things right when we make mistakes."

The fact that fewer cases are being referred to us for investigation suggests that the Inland Revenue continue to get better at resolving complaints before they escalate. We are certainly seeing fewer cases where they have failed to identify mistakes during their own attempts to resolve matters.

When we consider complaints about the Inland Revenue, we look at the instructions available to their staff as well as the published standards in Code of Practice 1. While we welcomed the revisions made to Code of Practice 1 in 2001, we would like to see the approach adopted better reflected in internal guidance on redress.

The coming year will be a challenging one for the Inland Revenue as the organisation expands further into the world of State Benefits and new Tax Credits. This will involve working with a broader range of customers, with differing needs and expectations.

The following cases illustrate three particular aspects of our work with the Inland Revenue

## Extra Statutory Concession A19 (ESC A19)

In many of the cases that we see, complainants want the Inland Revenue to give up tax due. Under their ESC A19, the Inland Revenue can give up arrears of tax where they have failed to make proper and timely use of information received. Usually, the concession will only apply where a taxpayer:

- was notified of arrears more than 12 months after the end of the tax year in which the Inland Revenue received the information showing that more tax was due.

There are, however, exceptions to this rule and arrears of tax notified 12 months or less after the end of the relevant tax year may be given up if the Inland Revenue:

- failed more than once to make proper use of the facts they were given about a single source of income, or
- allowed the arrears to accumulate over two whole tax years in succession by failing to make proper and timely use of information that they had been given.

But the concession can only apply where it was reasonable for the taxpayer to have believed that their tax affairs were in order. This difficult test is often the deciding factor in determining whether or not the Inland Revenue have applied their discretion fairly and properly.



### CASE STUDY

#### A reasonable belief?

Miss A worked for part of a tax year on a ferry owned by a company registered in the Channel Islands. She was paid without deduction of income tax. She sent the Inland Revenue her Self Assessment tax return for the year in question, and included this untaxed income as well as income from other sources that had been taxed.

The Inland Revenue sent Miss A a tax calculation, showing that she had paid too much tax overall. There was a note on the calculation saying that her earnings on board the ferry were not taxable in the UK. They later sent Miss A a repayment of the tax overpaid.

Subsequently, the Inland Revenue opened an enquiry into Miss A's tax return. In their opening letter, they asked for further information about Miss A's claim for non-residency. Miss A denied claiming to be non-resident, and said it was the Inland Revenue that had told her that the earnings were not taxable in the UK. The Inland Revenue pursued the enquiry, maintaining that Miss A had herself claimed that she was not resident. They closed the enquiry early in the following year, when they accepted that the tick in the non-residence box on the return had actually been entered by the Inland Revenue as they processed it. Nevertheless, they told Miss A that all of her earnings were taxable and that she should not have received the repayment.

Miss A complained and asked the Inland Revenue to consider whether the tax should be waived under their ESC A19.

The Inland Revenue accepted that they had not handled Miss A's affairs well, and paid her £25 costs and £25 compensation for worry and distress. However, they did not agree that ESC A19 applied, as Miss A could not reasonably have believed that her earnings were not taxable.

**We took the view that Miss A's case fell within the exceptional circumstances of ESC A19, in that the Inland Revenue failed more than once to make proper use of the facts they had been given about one source of income. These occasions were:**

- the mistake in amending Miss A's return to show that her ferry earnings were not taxable,
- the incorrect repayment, and
- opening the enquiry on the basis that Miss A had claimed her ferry earnings were not taxable, which she had not.

We also considered that Miss A met the "reasonable belief" test. While she may have expected to pay tax on her ferry earnings when she submitted her return, it was reasonable for her to believe that was not the case when the Inland Revenue told her that the employment was not taxable in the UK, and she received the resulting repayment.

The Inland Revenue accepted our view on the "reasonable belief" test. They agreed that there could be circumstances that could change what a taxpayer could reasonably believe.

Miss A accepted the proposal to mediate the case on the basis that the Inland Revenue would not pursue the £1,511 repayment they had incorrectly made.

## Watch your code number!

Many of the cases we see involving unexpected tax liabilities stem from problems with an individual's tax code. The code number tells an employer how much tax to deduct from an employee's pay. If the code is incorrect, it can result in an employer failing to deduct enough tax. Sometimes, an employee may not realise that they have paid insufficient tax until many months after the end of the year, often only when they have completed a Self Assessment tax return and received a statement showing an underpayment.

In some cases, the Inland Revenue fail to amend a taxpayer's code number, even when they have received all necessary information from the taxpayer, or their employer.

Even though this is a mistake by the Inland Revenue, it could be an obvious omission. In some cases, where a taxpayer does not receive a revised notice of coding, or notice a change in the amount of tax deducted from their salary, it should have been clear that their tax affairs were not in order.



An employer also has responsibilities to ensure that they handle an employee's tax affairs correctly and, in some circumstances, the employer can be liable for any under-deduction of tax. Occasionally, therefore, we have asked the Inland Revenue to consider whether an employer is responsible for underpayments of tax resulting from the use of an incorrect code number. The following case gives an example of this.

CASE STUDY

### Who's to blame?

Ms B changed employment in February 1997 but was unable to provide her employer with a P45 form from her previous employment. Though it could not be traced, it appeared that a P46 form was signed by Ms B and sent to the Inland Revenue. As a result, a Basic Rate (BR) tax code was applied to Ms B's salary.

Ms B was liable to pay income tax at the higher rate, so a BR code was not appropriate. However, it remained in force for three tax years, resulting in a significant underpayment of tax. Although the Inland Revenue issued Ms B with a revised tax code in December 1998, it failed to include the car and fuel benefit that Ms B was receiving.

Ms B ceased employment in November 1999, and received Self Assessment tax returns from the Inland Revenue in March 2001, covering the 1996/1997 - 1999/2000 tax years. On their completion, her substantial tax arrears came to light.

While the Inland Revenue accepted that they had handled Ms B's affairs poorly, they rejected her agent's claim for ESC A19 on the basis that she did not satisfy the reasonable belief test.

**As part of our investigation, we asked the Inland Revenue to consider whether there were any grounds for collecting Ms B's underpayment from her employer.**

**It could not be determined whether the P46 had been completed properly in this case, but the Inland Revenue pointed out that Ms B's employers had a good track record of administering their employees' tax affairs properly. Inland Revenue instructions to employers state that, once a BR code is in place, it should not be amended unless instructed to do so by the Inland Revenue.**

**The Inland Revenue concluded that, on the balance of probability, Ms B's employer had acted properly in operating a BR code in the absence of a P45 and there were insufficient grounds to ask them to settle the underpayment on Ms B's behalf. We considered that this decision was reasonable.**

**We also agreed with the Inland Revenue that Ms B did not satisfy the reasonable belief test. We concluded that her circumstances were such that she might reasonably have been expected to realise, from her payslips and P60s, that she was underpaying tax.**

We find that problems with notices of coding can be especially complicated where a taxpayer has more than one source of income from which the payer should deduct tax. In such cases, separate code numbers should normally be issued in respect of each source.

CASE STUDY

### Double take!

Mr C retired from the police force. He supplemented his police pension with spells of employment and self-employment.

The tax office responsible for dealing with Mr C's police pension carried out some amendments to his tax records. Unfortunately, these amendments were not carried out correctly. As a result, for the 2000/2001 tax year, the Inland Revenue issued code numbers to his pension provider and his employer, both of which included all Mr C's personal allowances. As Mr C was given two lots of personal allowances, he underpaid tax in 2000/2001 and the following year. This came to light in early 2002 when the Inland Revenue dealt with his 2000/2001 tax return.

Mr C complained to the Inland Revenue. Although they agreed that they had failed to maintain his records properly, and paid him £100 for the worry and distress that they had caused, they were not prepared to give up Mr C's arrears of tax under the provisions of ESC A19. They considered that, as he was advised about the underpayments in March 2002, this was within the required time limits and ESC A19 could not, therefore, apply. Additionally, they felt that he should have been aware that he was receiving duplicate personal allowances, and could not reasonably have believed his affairs were in order.

**When we took the case on for investigation, we felt that the exceptional circumstances under ESC A19 applied as the Inland Revenue had allowed Mr C's arrears, resulting from their mistake, to build up over two consecutive tax years.**

**Furthermore, we also considered that the reasonable belief test was satisfied. During the tax years in question, Mr C had not received any revised Notices of Coding from the Inland Revenue, which might have alerted him to the fact that his personal allowances had been duplicated.**

**The Inland Revenue agreed to apply ESC A19 in line with our own conclusions. They offered to give up the tax arrears, amounting to over £2,700 and pay Mr C a further £100 for their poor handling of his complaint and £30 for his costs. Mr C accepted the Inland Revenue's offer and we concluded matters by mediation.**

We understand that the Inland Revenue are considering the possibility of a review of coding notices, to see if they can be made more readily understandable and to emphasise the importance of checking that the payer is operating the correct code number.

## Inappropriate disclosure of information

The Inland Revenue place great emphasis on confidentiality and recognise their duty to ensure that they respect the privacy of all taxpayers. Occasionally, confidential information is inadvertently made available to third parties with potentially damaging consequences. Although such occurrences are rare, the following case studies illustrate the importance of ensuring that information remains confidential.

### CASE STUDY

#### Separate identity

Ms D complained that the Inland Revenue had sent information about her tax affairs to her ex-husband's address. She also complained that, when she pointed out their mistakes, and made complaints about what had happened, she was ignored.

Following receipt of information about a different taxpayer, the Inland Revenue had changed their records about Ms D. As a result of this, her notices of coding had been sent to her ex-husband's address. Ms D was anxious that her ex-husband should not know where she was living, or be given any other information about her, as he had previously assaulted her and she had experienced a traumatic divorce.

The Inland Revenue amended their records, but, to make matters worse, they then sent a detailed letter of apology and explanation to her neighbour's address, rather than to her own. This reinforced her belief that the matter was not being treated seriously. When she made further complaints, these were re-directed to other parts of the Inland Revenue before finally being returned to the correct office for a response.

When Ms D received a response from the Inland Revenue, she felt that their compensation offer of £100 was insulting, particularly when further correspondence went astray on the day after the Inland Revenue had written to her, reassuring her that their records were now correct.

**We substantially upheld Ms D's complaint. We considered that the Inland Revenue had offered insufficient compensation in view of the serious distress and worry that Ms D suffered. We recommended a payment of £500 in recognition of this. We also considered that the Inland Revenue handled Ms D's complaint badly, recommending a further payment of £100 in recognition of this, together with £20 to cover her out of pocket expenses.**

**CASE STUDY****A matrimonial affair**

Mr and Mrs E are pensioners in receipt of modest incomes. The Inland Revenue received information that Mr E had been doing some paid gardening work for a number of years but had failed to declare this to them. They asked Mr E to complete tax returns, which he did, but he omitted his gardening income and an enquiry was opened into his 1998/99 tax return.

A meeting took place at Mr E's house. The Inspectors learned that Mrs E ran the household finances and asked to see details of her bank account. Later, they asked her to attend a meeting with Mr E to provide further details of her finances. She refused, but said that she would answer any questions the Inland Revenue had in writing. As a result of her refusal to attend the meeting, the Inland Revenue issued Self Assessment tax returns to Mrs E and then opened enquiries into her own tax affairs.

Ultimately, Mr E's enquiry was concluded with no additional liability and the Inland Revenue concluded that Mrs E was actually due a repayment of tax overpaid.

Mrs E complained that the Inland Revenue should not have disclosed details of her bank account to Mr E. Mrs E said that her husband had discovered that she had various savings accounts that he knew nothing about, and that the resulting upset had distressed her greatly.

**We considered that the Inland Revenue had failed properly to recognise that Mr and Mrs E should be dealt with as separate individuals. We saw clear evidence of the distress that this caused to Mrs E and recommended the Inland Revenue pay her £250 in recognition of this.**

**We also found that the Inland Revenue should not have issued tax returns to Mrs E, which they accepted were simply to obtain information about her husband. We considered that they should have accepted her offer to provide the information in writing, as she had suggested. The Inland Revenue have other powers at their disposal to obtain information, which could have been used if Mrs E had refused. In the circumstances, we concluded that, as the returns should not have been issued, the resulting enquiry should not have taken place. We recommended compensation of £500 for this mistake, together with an award of £50 for Mrs E's costs.**

**Although the enquiry into Mr E's affairs was justified, we identified that the Inland Revenue made a number of mistakes in the way that they dealt with his tax affairs. We found that their enquiry was handled poorly and recommended the Inland Revenue pay him £175 for the upset caused and a payment of £25 for his costs.**

**Enquiries** Enquiries into a person's tax affairs may be stressful for the parties concerned. They can take a long time to conclude, with mounting frustration and animosity, and are a common cause of complaint.

**CASE STUDY**

**Trawling around**

ABC Limited complained about an investigation into their accounts for the period ending 30 June 1994. The Inspector's enquiries began in May 1995, although the investigation was not formally opened until November of that year. This led to allegations by the company's agent that their client was the victim of a "fishing expedition". The Inland Revenue accepted that there was a delay in opening the investigation, but pointed out that the enquiries were justified, because there were inaccuracies in the company's accounts and omissions from the director's tax returns.

The agent also complained that there were delays and that the Inland Revenue did not accept the company's reasonable explanations. The enquiry was not concluded until November 2000, over 5 years after it commenced. The Inland Revenue accepted that there were some unnecessary delays, and had agreed to reimburse professional costs amounting to £450.

The director also said that the investigation caused significant worry and distress. The Inland Revenue had made a payment of £50 in recognition of this.

**We found that, although this was a case where the Inland Revenue clearly could have handled things better, and things had gone on for too long, there were sound reasons for the investigation. We agreed that the Inland Revenue had taken all reasonable steps to resolve the problems, so we did not uphold the complaint.**

**CASE STUDY**

**A refusal to negotiate**

Mr F dealt with all tax matters on behalf of himself and his wife. He was not an easy taxpayer to deal with, providing information on a piecemeal basis and only when forced to do so. He made frequent allegations of racist behaviour on the part of the various Inspectors involved with his case.

The Inspector had, as a result, become exasperated with Mr F. This led to the imposition of a deadline for Mr F's agreement to the Inspector's proposals for additions to profits, or the matter would be heard by the General Commissioners. The Inspector had not, however, provided Mr F with computations of his liability based on those additions. He also refused to negotiate further unless Mr F made a payment on account. In the event, Mr F agreed to the Inspector's proposals a few hours after the deadline had expired, but the Inspector rejected Mr F's agreement as being too late and proposed increased additions to profits.

Mr F reluctantly accepted the higher figure, but complained about how the matter had been handled.

We found that the Inspector was wrong to impose conditions on further negotiations. The Inspector's demand for a payment on account as a condition for further negotiation contravened the Inland Revenue's instructions.

We also found that the Inspector had acted unreasonably in rejecting acceptance of his proposals, in the absence of new evidence, solely because his deadline had been missed. We recommended that the Inland Revenue calculate what would have been the settlement figures had Mr F's agreement to the original proposals been accepted and make a payment to Mr and Mrs F of the difference between the two settlements.

In addition we recommended that the Inland Revenue reimburse the professional fees Mr and Mrs F incurred in negotiating the later settlement, together with the costs of bringing their complaint to this office. We also recommended that the Inland Revenue pay Mr and Mrs F £200 each for worry and distress.

## The Tax Credit Office

In our last Annual Report, we praised the positive and innovative approaches taken by the Tax Credit Office (TCO) to improving complaint handling. Even though we had upheld all of the complaints that we investigated about them, we were seeing very few complaints that they had failed to resolve internally.

This year, we have seen further evidence of their receptive approach to making service improvements, through such media as internal memos and newsletters, which reinforce positive messages about improving customer service.

And this year, there has been a reduction in the number of complaints about the TCO that were upheld, suggesting the office has come still further since it was formed in October 1999.

Having administered the Working Families' Tax Credit (WFTC) and the Disabled Person's Tax Credit (DPTC), the TCO's challenge for the coming year will involve new Tax Credits and a much broader customer base. Recipients of the previous tax credits would no doubt be hoping for a seamless transition to new Tax Credits. Early indications, however, suggest that there may be some initial problems in this regard. Of course, all of the cases we have seen so far, and the case studies that follow, relate to the previous tax credits. We hope that the TCO will use the lessons learned to help ensure that new Tax Credits are introduced and managed successfully.

**CASE STUDY****An unexpected visit**

Mrs G, a registered childminder, complained about the way an enquiry into her application for WFTC was handled. She said that the officers investigating her application gave her insufficient notice of their visit and, as a result, she was interviewed whilst the two young children she looked after were present. At the end of the interview, the officers advised her that she did not work sufficient hours to be entitled to WFTC, and removed her order book.

Without the regular WFTC payments, Mrs G said she could not afford for her two sons to continue with their college course. They left college, without gaining any qualifications, to take up full time employment.

Mrs G said that the experience was so upsetting she did not feel able to reapply for WFTC. She did eventually appeal against the decision to withdraw her WFTC and a tribunal ruled that she did work sufficient hours to qualify and reinstated her award. However, this sum was not paid until seventeen months later and only after Mrs G had contacted the TCO on a number of occasions.

**The TCO accepted that they had made a number of mistakes during their enquiry. During the course of our investigation, Mrs G provided us with further information and the TCO agreed that their actions had had very serious consequences for her and her family. They agreed to pay her £25 costs, £521 in respect of the WFTC she would have received if she had not felt too upset to reapply and £1,000 in recognition of the worry and distress caused as a result of their mistakes and delays.**

**CASE STUDY****An appealing case**

Ms H complained that the TCO repeatedly turned down her applications for WFTC because they said that her partner had a capital asset valued at more than £8,000. [WFTC could only be awarded where the value of the applicant's capital was less than £8,000 in total. A claim for WFTC had to be renewed every 26 weeks.]

Ms H's first application for WFTC was refused in 2000. She appealed and the Independent Tribunal decided that Ms H was entitled to WFTC, as they concluded that her partner's capital had no value. However, when Ms H renewed her application for WFTC, the TCO again took the view that the asset had value and refused her claim. Ms H's appeal was again successful. By the time that she complained to the Adjudicator's Office, four successive applications for WFTC had been refused on the same grounds, and she had been successful in three appeals to the Tribunal.

Ms H said that it was unreasonable for the Inland Revenue to put her to the expense of an appeal, and delay in receiving WFTC which happened each time that she applied, even though her circumstances had not changed.

We contacted the TCO and asked if they might be prepared to accept Ms H's application, particularly as new Tax Credits, which have no capital limit, would be introduced shortly. The TCO said that they had to consider each application afresh without regard to the earlier Tribunal decisions, and we accepted that they had been reasonable, on the basis of the evidence available to them, to conclude that Ms H's partner's capital was worth more than £8,000.

However, following discussion, the TCO agreed, exceptionally, to exercise some discretion in the way that they dealt with Ms H's later applications for WFTC. In view of the series of Tribunal decisions, they agreed that they would accept further applications if Ms H's circumstances remained the same.

We were pleased that the TCO agreed to take this pragmatic approach and, as we found that they had not been unreasonable in their decision to refuse Ms H's applications in the first place, we did not treat this complaint as upheld.

#### CASE STUDY

#### Problems with transition

Mrs I complained that, during the period of transition from Family Credit (FC) to WFTC, the TCO failed to provide her with sufficient information to make an informed choice about whether or not to renew her FC award, or wait and apply for the more generous WFTC.

She renewed her FC award but subsequently discovered that, if she had delayed making a claim, she could have received WFTC, which would have given her an extra £25 per week. She asked the TCO if she could withdraw her claim and apply for WFTC but this was refused and the TCO suggested that she could appeal against the decision. She lost her appeal on the ground that her FC award was correct in law and that the Tribunal could not consider the matter of provision of information. She felt that, as it was inevitably going to fail, she should not have been advised to appeal.

**We agreed with Mrs I that the advice that she was given regarding her appeal was inappropriate. The TCO subsequently agreed to make a payment of £25 for poor complaints handling, a consolatory payment of £50 and to reimburse Mrs I £10 for her costs.**

## Receivables Management Service

The Receivables Management Service (RMS) was formed in April 2001, providing a streamlined specialist business service embracing the Inland Revenue's payment handling and accounting and debt and return management.

As well as the recovery of debts and outstanding tax returns, RMS plays an important role in encouraging taxpayers to comply with their statutory obligations. In addition, it has a key role in contributing to "joined up" debt management services across Government.





The main areas that were amalgamated under the "umbrella" of RMS were:

- the Accounts Offices in Shipley and Cumbernauld
- Enforcement Office in Worthing and the enforcement sections in Belfast and Edinburgh
- the Receivables Telephone Centre in East Kilbride
- 149 individual local Recovery Offices and 10 group offices (which were previously part of the Taxes Network).

At the same time, RMS took on responsibility for providing specialist insolvency services for Customs and Excise as part of a new RMS Voluntary Arrangement Service. In October 2001, the National Insurance Contributions Office's receivables management group joined these offices.

## Enforcement

As in previous years, we continue to receive a number of complaints about the RMS, especially in relation to their enforcement work, where bankruptcy may be used as a last resort.

### CASE STUDY

#### Head in the sand

The Inland Revenue obtained a bankruptcy order against Mr J after he had consistently failed to complete tax returns for 5 years. The Inland Revenue had issued assessments for each of these years, which formed the basis of the debt that they were pursuing.

Mr J subsequently claimed that the Inland Revenue should not have made him bankrupt because, when he finally submitted his outstanding tax returns, there was found to be no tax due. He also said that he had received no correspondence from the Inland Revenue to alert him to the seriousness of the situation.

**During our investigation, we saw that the Inland Revenue had actually made numerous attempts to contact Mr J before the bankruptcy petition was lodged. Officers had called at his home, delivering a statutory demand for payment personally. Mr J subsequently admitted that he had ignored matters, hoping that the situation would simply go away. We did not uphold his complaint.**

### CASE STUDY

#### See you in Court!

K Ltd were consistently late paying over tax they had deducted from employees' wages. The Inland Revenue had commenced a total of 21 County Court actions but, on each occasion, payment had been made just in time to avoid a County Court judgment.

On this occasion, the deemed date of service of the summons was 7 December for payment in full within 14 days. On the 15th day, the company delivered a cheque in full settlement, by recorded delivery, to the Inland Revenue offices.

The Inland Revenue acknowledged that they had received the cheque, but had nonetheless applied for judgment in default. As a result of this judgment, the company experienced difficulties in concluding a property transaction, resulting in additional costs and embarrassment. The company sought an apology, compensation to meet additional costs incurred and damages.

**We were concerned that, in this case, the Inland Revenue were trying to use the court procedure inappropriately. Judgments of this nature are entered to secure payment. In this case, the Inland Revenue were fully aware that payment had been made.**

**The Inland Revenue argued that a cheque is just a promissory payment. Although this is true, there was no history of dishonoured cheques and the Inland Revenue had given no indication to the company that a cheque would not be a suitable form of payment. We decided that, in this instance, the Inland Revenue's actions were unreasonable.**

**The Inland Revenue agreed to reimburse professional fees and pay £100 for poor complaints handling. We resolved the complaint, which we upheld, by our preferred method of mediation.**

## Time to pay

In some circumstances, the Inland Revenue have the discretion to offer taxpayers in difficulty additional time to pay tax due. If applied, this concession gives a taxpayer an opportunity to spread the payment of their arrears over an agreed period of time.

### CASE STUDY

## Ability to pay

Ms L told the Inland Revenue about a change of address in April 1999, but they failed to amend their records. This was only discovered in January 2001, by which time the Inland Revenue had issued 1997/98, 1998/99 and 1999/2000 Self Assessment tax returns to the wrong address.

The tax office agreed to cancel the resulting penalties, accepting that Ms L had a reasonable excuse for not having completed her tax returns. Ms L submitted duplicate tax returns in March 2001. The tax office thought that they had correctly processed her 1999/2000 tax return in April 2001 and transferred a repayment of £1,344 directly to her bank account.

A month later, the tax office realised that they had mistakenly processed Ms L's 1998/99 tax return as if it were for 1999/2000. They apologised, but asked Ms L to refund the amount they had repaid in error and to pay additional tax that was due for all three years. Ms L asked the Inland Revenue if she could pay the outstanding amount, of approximately £2,500, over 12 months, without incurring additional interest charges.

The tax office advised Ms L to pay the additional tax due as interest would start to accrue. They said that any interest objection could only be dealt with after the outstanding liability was fully paid. Ms L was offered six months to pay the outstanding amount in full.

Ms L complained to the Adjudicator, as she remained dissatisfied with the Inland Revenue's replies. She asked for our views on their mistakes in dealing with her tax affairs, the misleading advice they had given her about how payments could be allocated, and the attitude of some of the staff she had dealt with.

**We considered that the Inland Revenue had made a number of mistakes. We also found that they had failed fully to establish her ability to pay when they considered her request for time to pay.**

**In addition, Ms L's balancing payments for 1997/98, 1998/99 and 1999/2000 had been wrongly allocated against the "over-repayment", contrary to her wishes, so interest had been charged on the payments. We accepted that Ms L had been given poor advice in this respect, and that the Inland Revenue had wrongly told her that they could not reallocate the payment in the way that she had asked. We found no evidence, however, that Ms L had been treated rudely or aggressively.**

**The Inland Revenue accepted the mistakes they had made and reallocated her payments as she had intended. They also agreed to waive all interest and surcharges and pay £10 to cover her direct costs and £75 for poor complaint handling.**

## The National Insurance Contributions Office

It is now four years since the Contributions Agency merged with the Inland Revenue to form the National Insurance Contributions Office (the Office).

This year has seen an increase in the number of circumstances in which appeals can be made against formal decisions made by the Office. Before the merger with the Inland Revenue, appeals against decisions relating to National Insurance matters were dealt with by the Secretary of State for Social Security.

Following the merger, legislation was introduced so that appeals against National Insurance decisions could be made to the General or Special Tax Commissioners, in line with the rest of the Inland Revenue. Until recently, some of the Office's decisions could not be appealed in this way.

This has now been changed and appeals on a range of decisions which relate to National Insurance matters, including:

- employment status
- liability to pay Class 1, Class 1A and Class 2 National Insurance contributions
- entitlement to pay voluntary National Insurance contributions

- matters concerning Statutory Sick Pay, Statutory Maternity Pay, Statutory Adoption Pay and Statutory Paternity Pay

can all be dealt with in the same way as appeals against tax decisions - before the General or Special Tax Commissioners.

We have seen some cases this year where the appropriate route of appeal against a Notice of Decision on National Insurance matters has not been explained properly to customers. Although our remit does not extend to considering matters that are proper to the independent appeal Commissioners, we can ensure that, where such a route of appeal exists, the customer has been made aware of it.

In last year's report, we noted that we were still seeing complaints about the Office's computer system, the National Insurance Recording System 2 (NIRS2), some years after full functionality was achieved. In many cases, the first indication of problems with the recording of National Insurance contributions on a customer's account comes when they request a Retirement Pension forecast, which shows deficiencies. Problems can have a damaging effect on a customer's State Benefit entitlement, so it is important that the Office records the National Insurance contributions paid by its customers accurately and on time.

The following case illustrates the confusion surrounding which decisions carried an automatic right of appeal, prior to the implementation of new legislation in the latter half of the year.

#### CASE STUDY

#### **Volunteering to pay**

Ms M claimed that she was given misleading advice in 1973, which would result in her only receiving 85% of a full Retirement Pension when she retired. She argued that she had been ill-advised by the Office but they refused to allow her to pay Class 3 voluntary National Insurance contributions.

Ms M appealed to the General Commissioners, but her appeal failed as the Commissioners then had no jurisdiction to consider the Office's decision on an application to pay Class 3 voluntary contributions. She was not happy with the way the Office handled her case, or with the level of compensation offered, which amounted to £50 in recognition of the way her case was handled and £10 for her costs.

**The case fell under the new appealable decisions legislation and, following our investigation, the Office agreed to issue Ms M with a new Notice of Decision, paving the way for a fresh appeal to the Commissioners once they had jurisdiction. The Office agreed to a small increase in the amount of costs and the consolatory payment offered. The complaint was not upheld.**

## Poor complaints handling

In common with other areas of the Inland Revenue and, indeed, the other organisations with whom we work, we continue to see cases where mistakes are compounded by the Office's poor complaints handling. Something as simple as a genuine apology for a mistake can often prevent matters from escalating.

### CASE STUDY

#### We're sorry!

Mr N, a self-employed farmer, complained about the Office's failure to allocate his Class 2 National Insurance contributions properly. Although he insisted that he had paid the contributions, the Office obtained a County Court judgment against him. Mr N was ill and had been refused Incapacity Benefit during this time because of the gap in his National Insurance contributions. His farm had also suffered from an outbreak of Foot and Mouth disease.

The Office discovered that Mr N had made the payments and arranged to have the judgment set aside. They wrote to Mr N to acknowledge their mistake, but did not apologise. They offered to pay some of his direct costs and a payment of £100 for the worry and distress he had suffered. Mr N was unhappy with the level of compensation, particularly as the Office had refused to consider paying him for the time he had spent dealing with their mistakes.

Mr N provided evidence to show that he had contacted the Office on a number of occasions but we could find no record of this in their papers. The Office offered Mr N a further £150 in light of this new information. We still thought that there might be more papers relating to Mr N's complaint and, following a search by the Office, another file came to light.

**We found that the Office had made mistakes with regard to the payments made by Mr N, which had serious consequences for him at a difficult time in his personal life. We thought that the complaint should have been investigated more fully by the Office and were concerned that some of the key papers were not located until late in our investigation.**

**We were only able to uphold Mr N's complaint in part, as he was not able to provide evidence of any direct financial loss and we could not recommend payment for the time he had spent on the complaint. However, we did recommend that the Office increase the payment for worry and distress by a further £250, pay £250 in recognition of the poor way they had handled his complaint, and, of course, apologise.**

## NIRS2

### CASE STUDY

#### A surprise bill

Mrs O complained that the Office had sent her a bill for Class 2 National Insurance contributions, four years after they were due. Mrs O believed that she had paid these contributions and complained that the Office could not demonstrate to her that this was not the case.

The Office explained to us that, because of NIRS 2 problems, no bills were generated for one quarter of the 1998/99 year and that it was only in September 2002 that the problem was fixed. This was why Mrs O was sent a bill so late. The Office said that they were unable to identify who the affected contributors were before now, but that, since there was a gap on Mrs O's account, it was unlikely that she had paid. They offered £50 compensation and £5 costs.

**We partially upheld Mrs O's complaint. There had been no indication that she owed money and the Office did not address her specific point that she believed she had paid the money in question. Although, in the circumstances of this case, we did not consider it appropriate to ask the Office to waive the arrears, we felt that £125 was more appropriate for a four-year delay. The Office subsequently agreed with our view and offset the amount against the arrears that she owed for the 1998/99 tax year.**

## Married Women's Reduced Rate National Insurance contributions

Until 1977, married women had the choice to either pay full rate National Insurance contributions, or reduced rate contributions. Choosing to pay reduced rate National Insurance contributions meant that the woman would not receive a pension in her own right. Instead, her pension entitlement would be calculated on the basis of her husband's National Insurance record when he reached retirement age.

Historically, we have investigated a number of cases where a married woman, approaching pension age, has been shocked to discover that she will not receive a pension in her own right. In many such cases, her election to pay reduced rate contributions was made over 30 years ago and the implications of her choice have been forgotten.



**Thinking ahead**

Mrs P made a Married Women's Reduced Rate Election in the mid-1960s. She subsequently complained that she was being treated unfairly because she could not attain a full pension. Mrs P's husband is younger than her, which means that she will not receive a pension based on his National Insurance contributions until he has reached the age of 65, by which time she will be 70. Mrs P accepted that she made the election, but said that she was not told how it would affect her pension when she made her choice to pay reduced rate National Insurance contributions.

**We did not uphold Mrs P's complaint. When married women made an election to pay reduced rate National Insurance contributions, they had to complete the relevant application form. This form was attached to a leaflet, which clearly explained the effect of such an election on future benefits.**

**By signing the application form, the woman was confirming that she understood the implications of her choice, having read the leaflet in question. Mrs P could have subsequently revoked her election at any time and, in our opinion, she would have been aware of the implications at the time when she made her choice.**

# Valuation Office Agency

The Valuation Office Agency (VOA) is an Executive Agency of the Inland Revenue and is responsible primarily for the council tax banding on domestic properties in England and Wales and the rating assessments on non-domestic properties in England and Wales. The Agency is also responsible for Right to Buy determinations in England, Wales and Scotland and carries out valuations for government departments and some local authorities.

## Complaints about the Valuation Office Agency



Valuation Office Agency - Putting things right for you.

The number of complaints that we investigate about the VOA continues to decrease. This year, we completed 9 full investigations, 8 fewer than last year, of which 5 were either wholly or partially upheld. The decreasing number reflects well on the VOA, as it suggests that they are adept at resolving complaints before they escalate to this office.

In last year's report we explained that, in the majority of complaints about the VOA, the crux of the matter concerns a dispute about council tax banding or a non-domestic rating valuation. Neither of these issues are ones that we can consider, as such concerns should be raised with independent tribunals.

The sorts of things that we can consider will be handling issues, such as delays, misleading advice or staff attitude. Although it is not within our remit to challenge the valuation of a property, we can investigate the procedures followed by the VOA when they make their valuation.

### CASE STUDY

#### The wrong property

Mr Q complained that he received misleading advice from the VOA, resulting in his company receiving a much higher rates bill than expected.

The company had contacted the VOA and asked for the rateable value of a property that they were thinking of relocating to. As a result of this call, the VOA sent a fax to the company showing what the rateable value of the property was. When the company leased the new property, they received a rates bill showing that the rateable value was in fact nearly 3 times higher than expected.

It transpired that the information provided by the VOA related to a different property on the same industrial estate with a very similar address. Before the complaint was referred to us, the VOA had already accepted that the addresses that they had used were confusing and had offered to pay the direct costs incurred as a result of their mistake. The company wanted compensation for the additional rates liability.

**Although we found that the VOA made a mistake when they sent the fax, we concluded that it was not reasonable for the company to rely solely on that information. Their solicitor had queried the rateable value with the lessor's solicitor and had not received a definitive answer. We saw from the company's papers that there**



were a number of other commercial reasons for the relocation, and could not conclude that the company would not have moved to the property irrespective of the rateable value.

**We did not uphold the complaint and did not ask the VOA to pay compensation for the additional liability.**

The VOA also provide a valuation service to the Inland Revenue, when property valuations are needed to calculate tax liabilities.

#### CASE STUDY

### **It took too long!**

Mr R complained to this office on behalf of his client company about the delays caused by the VOA in agreeing the valuation of a commercial property for Capital Gains Tax purposes. He said that the interest that arose as a direct result of these delays should be waived.

During the course of our investigation, it became apparent that the Inland Revenue were also responsible for some of the delays in finalising the tax due on the capital gain. Unfortunately, because of the age of the case, some of the Inland Revenue's papers had been destroyed. We asked the Inland Revenue to consider waiving the interest for those delays that we identified as probably being the result of inactivity by the Inland Revenue.

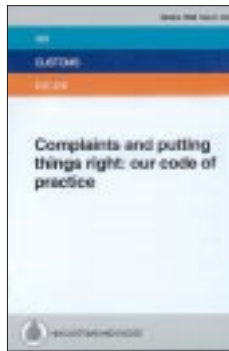
**We agreed that the VOA had caused unreasonable delays over several years and we asked the Inland Revenue to consider waiving the interest for those delays. They agreed to waive interest in excess of £30,000.**

**When viewed together, the cumulative effect of the delays by the Inland Revenue and the VOA was greater than each viewed in isolation. As far as the company was concerned, it was dealing with one body, the Inland Revenue.**

## Customs and Excise

Customs and Excise have a wide range of responsibilities, but are probably best known to the general public for their management of VAT and duty matters and for their presence at ports and airports across the UK.

### Complaints about Customs and Excise



Customs and Excise's Notice 1000 - *Complaints and putting things right: our code of practice.*

The number of complaints about Customs and Excise reaching our office this year has fallen in comparison with the preceding year.

We noted in our Annual Report last year the link between the considerable rise in the number of complaints and Customs and Excise's high profile commitment to stamp out cross-channel alcohol and tobacco smuggling. This year, we have investigated and closed more complaints about that area of activity than ever before. The number of fresh complaints received, however, which relate to that area of Customs and Excise's activity, is in decline. There can be little doubt that this is due, in no small part, to the outcomes of the well-publicised court cases during the course of the past year. Matters have also been helped by the revised measures Customs and Excise have put in place regarding the indicative quantities of excise goods a traveller might reasonably bring into the UK for their own use, duty paid, from the EC.

At the same time, the number of complaints we have received about how Customs and Excise have handled a trader's VAT affairs has dropped sharply. We noted last year that Customs and Excise introduced a revised code of practice on mistakes, which took effect from 1 April 2002, to coincide with the department's revised complaints structure. Early indications are that the new structure is working well and they are resolving more complaints at departmental level.

Although we have received fewer cases this year, we have closed a broadly similar number to previous years. The following case studies illustrate a number of interesting and significant issues that we have seen.

### Excise

Just as last year, we have raised a number of important and fundamental issues with Customs and Excise, which have contributed to considerable improvements to guidance and procedure. We are concerned, however, that some of these issues seem to have exposed a degree of uncertainty within Customs and Excise as to the correct approach or legal position.

We have continued to see examples of Customs and Excise failing to make people adequately aware of their options, and the consequences of taking one course of action rather than another. We have been encouraged, however, by Customs and Excise's preparedness to take on board our concerns, and to strive to make their communication clear, transparent and accurate. This year, we have taken far fewer calls from people who simply did not know where to turn when they had their goods and/or vehicle seized.

We are aware that Customs and Excise are undertaking a review of the appeal process for excise seizures and are pleased to have been consulted.

The following cases illustrate aspects which we have seen as particularly confusing. Perhaps most notably, the procedures where somebody is trying to secure a return of goods which have been seized.

Two considerations are relevant here:

- A person whose goods have been seized may ask for the goods to be returned to them. If the person accepts that Customs and Excise had the right to seize the goods, Customs and Excise may return the goods on certain conditions, usually including payment of a sum of money. This is called “restoration”. The decision to restore goods or not is appealable, and not one that we can therefore look into.
- If a person whose goods have been seized contests the seizure, the matter goes before a court. Customs cannot “restore” the goods if the seizure is being contested. But if a person asks for the goods to be returned, Customs and Excise may do so, again on payment of a sum of money. This process is called “delivery up”, and is discretionary with no right of appeal, so it falls within our remit.

#### CASE STUDY

### Returning goods

ABC Ltd buy and sell duty-paid alcoholic beverages. In April 2000, Officer B visited the company's premises and detained a quantity of wine. She asked them to provide her with evidence that duty had been paid. When they failed to do so, the goods were seized in June 2000.

The company's agent wrote to Customs and Excise and said that his clients wanted to contest the seizure, but wanted the wine 'restored'. Customs and Excise explained that they could not consider restoration until the court had determined the legality of the seizure. The company withdrew their appeal against the seizure and again asked Customs and Excise to 'restore' the wine in June 2000. After some negotiation, a 'restoration fee' was agreed and paid in January 2001. The goods were not returned, however, until August 2001, as a result of our intervention.

**Although Customs and Excise had been unable to consider restoration before the validity of the seizure had been determined, we concluded they had been wrong not to offer delivery up. We were also critical of the delay in returning the goods once the restoration fee had been paid. We asked Customs and Excise to reimburse the agent's fees and pay compensation for the delay in returning the goods between July 2000, when we felt the goods should have been returned, and August 2001.**

**We also found that Customs and Excise's guidance to officers was that they could consider restoration, even if seizure was being contested. Customs and Excise confirmed that this was incorrect and it has now been revised, although only after months of deliberation on Customs and Excise's part as to the correct legal position.**

Officer B had asked the company to produce evidence of duty payment. Notice 206 advises revenue traders about the records that Customs and Excise require them to keep. The company complained that the notice had misled them as it did not say that they had to hold evidence that duty had been paid.

**When we asked Customs and Excise to explain what they required, they said they needed to see documentation showing who had supplied the wine to ABC Ltd. Then, if Customs and Excise wished, they themselves could make enquiries further back through the supply chain to check that duty had been paid.**

**We thought that Notice 206 reasonably reflected the kinds of records Customs and Excise required ABC Ltd to hold, but we found that Officer B's letter, asking for evidence of duty payment, had been inappropriate. We asked Customs and Excise to apologise for this.**

At around the same time, another officer, Officer C, detained some different wine belonging to the company at other premises, on the instructions of Customs and Excise's National Investigation Service. Customs and Excise maintained the detention until September 2000, when they agreed to return the goods. In January 2001, they discovered that the wine had, wrongly, been destroyed. Officer C's colleagues failed to find similar wine to replace that which had been destroyed. ABC Ltd asked for financial compensation, which was agreed and paid in May 2001.

**We considered that Customs and Excise should have been able to tell the company that their wine had been destroyed in September 2000. We also thought that they should have immediately given ABC Ltd the choice of replacement goods, or compensation. We asked Customs and Excise to compensate ABC Ltd for the delay in discussing financial compensation.**

#### CASE STUDY

#### **A French connection**

Mr D's car and tobacco were seized by UK customs officers at the rail terminal located at the French end of the channel tunnel. He complained about the conduct of the customs officers at the time of the seizure. He said the officers swore at him. The officers denied this.

**In view of the direct conflict of evidence and the lack of independent evidence, we were unable to uphold this part of the complaint.**

Mr D also complained that Customs and Excise had sold his car before his appeal against their refusal to restore it to him had come up for hearing at the VAT and Duties Tribunal. Customs and Excise told us that the cost of storing seized vehicles was such that it was their policy to dispose of vehicles of a certain age after they had considered a request for restoration and refused. This policy was applied even if there was a later request for review, or an appeal to the Tribunal. They told us that, if a Tribunal hearing had led to a decision to restore Mr D's car, they would have offered him compensation equal to the car's value.

**We were concerned that Customs and Excise's policies should be clearly publicised, so that a traveller would be aware of the likely consequences if their car was seized.**

**We looked at the notices and letters that had been given and sent to Mr D. In our view, he was effectively led to believe that he would get his car back if his appeal was successful. This was incorrect because Customs and Excise knew the vehicle would be disposed of. As a result, he was naturally angry when he learnt about the sale of his car. We recommended that Customs and Excise apologise and pay him £100.**

#### CASE STUDY

#### A string of issues

Miss E raised a number of complaints following the seizure of her car and cigarettes at Coquelles in France.

She complained about the conditions in which she was interviewed. Customs and Excise said that Eurotunnel were responsible for providing and maintaining the customs facilities at Coquelles.

**We did not uphold this complaint. We noted the relevant legislation, and the formal document requiring Eurotunnel to provide and maintain the facilities. We said that Customs and Excise's response on this issue was correct.**

Miss E complained that the interviewing officer failed to contact the three people who she said could confirm that the cigarettes were for her personal use.

**We did not support this complaint. We said that it was directly relevant to the question of whether the seizure of the cigarettes was lawful and this was a question for the Magistrates, not us.**

Miss E complained that Customs and Excise sold her car before her appeal against seizure was heard in the Magistrates' Court.

**When we investigated this complaint, Customs and Excise acknowledged that the car had been sold in error. We therefore recommended that Customs and Excise should apologise and make a payment of £100 for the upset caused. Customs and Excise have since assured us that systems are now in place to ensure that vehicles do not get sold when an appeal has been lodged.**

Miss E asked Customs and Excise for copies of case notes. She complained that she had no response to this request.

**When we investigated, Customs and Excise accepted that they had overlooked this request. We therefore recommended that they should apologise, and pay Miss E £100.**

## Customs

In comparison with excise and VAT related issues, we see relatively few complaints originating from Customs and Excise's efforts to detect and prevent the importation of drugs, firearms, pornographic material, and the like. There is far less scope for doubt or misunderstanding on the part of the individual when it comes to the detection of such items. They are prohibited no matter what the quantity and society at large is likely to be aware of the restrictions.

None of that, of course, removes from Customs and Excise the requirement to treat people fairly, professionally and courteously, or the need to document proceedings fully and accurately. We see too few cases to pass any comment on the extent to which Customs and Excise achieve this difficult balance. Perhaps the fact that we do see so few cases is indicative that, more often than not, they get it about right.

### CASE STUDY

#### A searching experience

Mr F complained about how customs officers had treated him when they stopped him as he was entering the country. He told us that he had been questioned about carrying drugs. He had been strip-searched, had given a urine sample and had later been X-rayed in hospital. He complained that:

- the officers would not tell him why he was being searched
- they did not tell him his rights
- they told him that he was free to leave after the strip-search, if nothing was found, but this did not happen
- he was denied access to his glasses to read documents
- he was forced to give a urine sample
- Customs staff lied to him and threatened him
- he was denied legal representation
- the urine test results had been falsified
- he had to undergo an X-ray.

When we interviewed the intercepting officer in this case, she told us that she had stopped and questioned Mr F in the green (nothing to declare) channel. She said that he was immediately hostile towards her. We were told that it was Mr F's first visit to the particular destination and he was currently unemployed. The officer's suspicions were aroused because Mr F's financial position appeared

incompatible with the cost of his trip and he seemed nervous and aggressive in response to the officer's initial interception and questioning.

For these reasons, Mr F was searched as a potential carrier of illegal drugs. The officer told Mr F that, if he objected to the search, he could speak to a senior officer or to a Justice of the Peace. Mr F did not object to the search.

The search was carried out and no drugs were found. After the search, Mr F agreed to provide a urine sample. He was arrested for this purpose and became volatile, so he was handcuffed. He was taken to the custody suite where he was told his legal rights.

The urine sample tested positive for opiates, indicating that Mr F might have had an internal concealment of illegal drugs. He agreed to be X-rayed and was taken to Ashford hospital for this purpose. The X-ray was negative. Mr F was thanked for his co-operation and released.

**We had some concerns about the record keeping in this case, but the records that we saw supported the officer's account of what happened. Although we did not uphold the complaint, we asked Customs and Excise to remind officers of the importance of documenting the full procedural and decision making process.**

## VAT Related Issues

As in previous years, the largest single cause for complaint from VAT traders concerns misleading advice. We have continued to see cases where the inadequacy or lack of clarity of Customs and Excise's notes of discussions or meetings has not helped matters.

The nature of VAT, and the way in which Customs and Excise assure compliance through, amongst other things, a programme of visiting traders, lends itself to another, closely related, type of complaint: that by omitting to inform a trader that VAT is not being accounted for correctly, Customs and Excise are effectively misleading the trader by implication. This is known as "misdirection by omission". The realisation that, in fact, all is not well often arises some time later, usually when a trader is next visited by a VAT officer.

For their part, Customs and Excise say that the mere fact that they find no errors on a visit must not be taken to imply that all is well. A VAT visiting officer will not be undertaking a full audit. We have been pleased to see the efforts Customs and Excise have made to get this message across.

Nevertheless, we have upheld a number of complaints this year where we have concluded that the particular circumstances gave the trader every reason to take comfort from the visit and believe with justification that all was well.



**CASE STUDY****Partial exemption**

G Ltd's accountants complained to us that, on the occasion of an assurance visit, Customs and Excise had misdirected their clients. Customs and Excise had identified that the company was supplying services that were exempt from VAT, but failed to give advice about whether this meant that the company could only recover part of the VAT it incurred on its purchases. When it was later found that the company had overclaimed VAT, they said that Customs and Excise had misled them by failing to point out this mistake - misdirection by omission.

Customs and Excise had maintained that the criteria for misdirection had not been satisfied. They had conceded that the visit had not come up to the usual standard but they said that the visiting officer did not have the "full facts". They pointed out that a fundamental principle of VAT is that it is a self-assessed tax and that the responsibility to "get it right" rests with the trader. They also said that traders cannot reasonably assume that, if no errors are found during an assurance visit, all aspects of the business are in order.

**We looked at Customs and Excise's internal guidance to see what "full facts" means in the context of a claim of misdirection by omission. We took the view that, although the officer may not have had enough information to work out just how much VAT could be reclaimed, he had enough information to see that some calculation of the VAT reclaimable was required. Unfortunately, he gave no relevant advice to the trader. When we put this to Customs and Excise, they accepted that it amounted to misdirection by omission, and that G Ltd should therefore not have to repay the overclaimed VAT.**

**CASE STUDY****Customs put their foot in it!**

When Customs and Excise officers visited Mr H, who operated a wholesale footwear business and was newly registered for VAT, they gathered information about how the business operated before leaving. Another assurance officer visited Mr H some months later and found that he had not been charging VAT on sales of insoles for children's shoes. Although sales of footwear in children's sizes are zero-rated, sales of insoles are standard-rated, regardless of size. The assurance officer issued an assessment for VAT underdeclared on sales of insoles in children's sizes. Mr H claimed that one of the officers who had visited him earlier in the year had told him not to charge VAT on sales of insoles for children's shoes.

**We looked at the visiting officers' notes of the earlier visit. We could see that insoles had been discussed and that one of the officers had made a note of a question about the VAT liability of insoles. In the light of this, and on the balance of probability, we thought that Mr H had been given the mistaken impression that children's insoles were treated differently from those of adults. Customs and Excise agreed to give up the tax and interest involved, reimburse his costs and pay Mr H £200 for worry and distress.**



**CASE STUDY****A marginal decision**

I Ltd's agents complained that Customs and Excise had misdirected them during a VAT assurance officer's visit to the company's premises in 1994. They said that the visiting officer had not told them how MOT test fees and surrenders of road fund licences should be treated within the VAT second-hand margin scheme they operated. They said that this failure had disadvantaged them because they had accounted for less VAT than was due and were faced with an assessment for underdeclared VAT. They wanted Customs and Excise to waive the VAT due and pay compensation for costs the company had incurred.

Customs and Excise say that, at each assurance visit, an officer will decide which areas of the business to look at, using the limited time available to them. They again stressed that, simply because no errors are found, this does not mean that all aspects of the business are in order.

**We did not think it was unreasonable of the officer to have decided not to focus attention on MOT tests and road fund licence surrenders on this particular visit. There is nothing to indicate on the file that he should have seen this area as presenting significant risk in the context of the business overall. The officer carried out general checks and looked at purchases and sales. He also questioned the trader in depth about the provision of warranties and how they were accounted for.**

**Notice 700 - "The VAT Guide", and Notice 989 - "Visits by Customs and Excise officers", say that there will not be misdirection simply because an error is not spotted by a visiting officer. We were satisfied that Customs and Excise considered the issue properly and in line with their internal guidance, and that the decision they reached was reasonable. In our view, Customs and Excise did not misdirect the company. We did not find any grounds for asking them to pay the company compensation.**

**CASE STUDY****Winner takes all**

During a routine visit in 1992, an officer failed to identify that the majority of the supplies made by Mr and Mrs J were exempt rather than standard rated. They had been declaring VAT on all their supplies. This was picked up on a subsequent visit in 1998. Customs and Excise refunded the overpaid VAT and paid statutory interest back to the date of the first visit. Following a complaint to this office in 2001, Customs and Excise agreed to pay the VAT and statutory interest back to the date of registration and consider payment of professional fees.

Mr and Mrs J had engaged an adviser to deal with their complaint on the basis of "no win, no fee", the fee being 25% of any additional gross refund obtained. Customs and Excise offered approximately half of the fee as being what they considered reasonable costs based on the work carried out.

**In our investigation, we considered whether it was reasonable for Mr and Mrs J to agree the terms they did. We found that they had their case rejected by two firms of accountants and neither they, nor the agents, could have known what the outcome of the case would be, or the amount of time it might involve.**

Customs and Excise said they would only consider reimbursing fees charged provided the amount did not significantly exceed the fees that would have been charged had the usual hourly rate been applied. They said that this was set out in their guidance and they were anxious to ensure that contingent fee arrangements were not used to exploit their policy on ex gratia redress.

**We argued that, if Mr and Mrs J acted properly and prudently then, reasonably, they should not be out of pocket. We also said that, as internal guidance was not publicly available, neither agents or their clients could be expected to be aware of any additional considerations when deciding whether or not to enter into a “no win, no fee” arrangement.**

Following further correspondence, Customs and Excise accepted that their policy had not been adequately publicised and agreed to reimburse Mr and Mrs J the full amount of the professional fees they had incurred. Customs and Excise also agreed to reconsider their policy and future publicity.

#### CASE STUDY

#### A clean sheet?

LM Ltd devised a scheme involving books of vouchers. They wrote to Customs and Excise explaining the scheme and supplying a sample voucher book. They asked Customs and Excise to confirm the company's understanding of the VAT implications, which they did. LM Ltd then went ahead with the scheme.

Some months later, Customs and Excise decided that the VAT implications were, in fact, rather different. Customs and Excise raised assessments accordingly, against which LM Ltd appealed but were unsuccessful, both before the VAT and Duties Tribunal and the higher Courts.

LM Ltd then complained that they had been misled by Customs and Excise and asked them to reimburse the costs involved in setting up the scheme, which they said would not have gone ahead if Customs and Excise had correctly advised them on the VAT implications.

**We felt that Customs and Excise had been given all necessary information about the facts of the scheme. However, in their VAT Enquiries Guide Notice 700/51/95, Customs and Excise set out the basis upon which they will stand by advice they give if it turns out to be incorrect. They ask for all relevant facts, documentation and other matters which may materially affect the treatment of the transaction.**

We understood that LM Ltd had obtained Counsel's opinion on the transaction and given considerable thought to the correct treatment in conjunction with their advisors. In considering the complaint, we wanted to be satisfied that LM Ltd had provided all relevant information that might reasonably have been expected to Customs and Excise, and that they had indeed relied on the advice such that the scheme would not have gone ahead without it.

We asked LM Ltd to let us see relevant documentation so that we could understand the context in which the advice had been sought. We wanted to be satisfied that LM Ltd had let Customs and Excise have appropriate relevant information and to gauge the extent to which Customs and Excise's advice – as opposed to Counsel's opinion or their own advisors' views – had been relied upon.

No papers whatsoever were forthcoming. In the circumstances, we felt unable to conclude that Customs and Excise had acted unreasonably in refusing the claim for costs. We did not therefore uphold the complaint.

LM Ltd had also complained about Customs and Excise's delay in providing information to us so that we could investigate the complaint. We upheld this part of the complaint and asked Customs and Excise to apologise.

## National Advice Service

Customs' National Advice Service (NAS) was established to provide a single point of contact for a range of general advice and assistance, over the telephone, on all aspects of Customs' business. We occasionally see complaints that advice given has been misleading.

Very often, because it is unclear just what was asked and what information was provided, we cannot conclude that the advice given was clearly misleading. Occasionally though, there will be an obvious and crucial piece of information which the NAS should realise is essential and about which they should ensure there is no room for doubt. Customs may be held responsible for the advice if they fail to recognise this.



### A costly call

Mr K telephoned the NAS. He told them he was doing work for disabled people, for example, putting in access ramps. He was advised that, as long as the work was specifically designed for a disabled person, he could zero rate the supply. The adviser said that the relevant notice would be sent to him. She advised him that there was a certificate at the back of the notice that could be used to zero rate the supply.

Mr K then sent his client an invoice, showing VAT at the zero rate. He subsequently learnt that the supply should have been standard rated, because the work related to a commercial property, not a private house. His client was not willing to accept a VAT-only invoice, so the cost of the VAT would fall to Mr K. He complained that the NAS gave him incorrect advice.

Customs and Excise accepted that the adviser should have asked the obvious question, whether the work was to a private or commercial property, before giving advice. They argued, however, that Mr K should have waited for the notice before issuing the invoice – the notice showed that zero rating did not apply to work for disabled people at commercial properties.

**We upheld the complaint. The adviser gave specific advice without asking a further obvious and essential question, and in the particular circumstances of the case, we considered that this was a mistake. In view of the definite advice that Mr K was given about zero rating, we did not think he acted unreasonably in proceeding before receiving the notice.**

**We recommended that Customs and Excise apologise for their mistake, and ensure that Mr K did not have to pay the VAT.**

## Public Guardianship Office

The Public Guardianship Office (PGO) was formed in April 2001 from the Receivership and Protection divisions of the former Public Trust Office. It plays an important role in protecting the financial wellbeing of mentally incapacitated people.

The PGO is responsible for overseeing “receivers”, who are appointed by the Court of Protection to manage an incapacitated person’s financial affairs. Often, the receiver will be a family member, or friend, of the person concerned. Local authorities, professionals and receivers who are on the PGO’s accredited panel may also fulfil this role, as can the PGO itself in a small number of cases.

The PGO also registers Enduring Powers of Attorney when an individual has lost, or is losing, their mental capacity.

### Complaints about the Public Guardianship Office



Public Guardianship Office - *Complaints: Putting things right if things go wrong.*

It is now two years since we started to investigate complaints about the PGO. In that time, they have continued to experience considerable change, while struggling to reduce a large backlog of work. We continue to see unacceptable delays featuring regularly in our investigations of the PGO’s work. In a number of cases, poor record keeping and the loss of working papers have particularly concerned us.

In our last report, we said that progress in developing our relationship with the PGO had been disappointing. While it has remained difficult for the PGO to establish, or maintain, continuity in their complaints handling procedures, we are pleased to report some progress in this regard.

The PGO’s new code of practice, “Complaints - putting things right if things go wrong”, is certainly a step in the right direction. And they have recently introduced more formalised complaint handling procedures. It is essential that the PGO maintain a continuing relationship with customers even though we may have been asked to investigate a complaint about the service. We and the PGO are anxious to ensure that the position of the incapacitated person is not compromised, simply because we are carrying out an investigation, and regular contact must be maintained. It can be difficult to separate clearly that ongoing responsibility from the complaint we are investigating.

We have produced a new leaflet, A05, “How to complain about the Public Guardianship Office”, and this additional publicity has prompted an increase in the number of complaints that are referred to our office.

The following case studies illustrate the types of concern that have been brought to our attention.

**CASE STUDY****Time passes by**

Mrs A complained about long delays in the PGO's handling of her application to become receiver for her mother's affairs under the supervision of the Court of Protection.

The delay in appointing Mrs A as receiver had practical consequences. As a direct result, the payment of interest on the income from the sale of Mrs A's mother's house, and on an interim distribution from Mrs A's mother's share of her late sister's estate, was less than it should have been.

Mrs A subsequently contacted the PGO to tell them that her mother had died. They told her that this meant her receivership was terminated.

In spite of this, the PGO contacted Mrs A several times in apparent ignorance of her mother's death. Understandably, Mrs A found this to be extremely distressing.

**The PGO conceded that they could have dealt with Mrs A's application more efficiently, and suggested a date by when a Court of Protection Order should have been made. When we examined the case in detail, however, we felt that, had matters been dealt with properly, this would have happened some two months earlier than suggested.**

**We recommended that the PGO pay over £2,000 in lost interest. In addition, we recommended that they pay Mrs A £250 in recognition of the frustration, distress and delay she had suffered and a further £25 to cover her incidental costs. The PGO also agreed to put in place more robust procedures for recording a client's death.**

**CASE STUDY****Who to appoint?**

Mrs B complained about how the PGO had handled her mother's (Mrs C) affairs. When Mrs C's mental health deteriorated, there was a family dispute about who the Court of Protection should appoint as receiver to administer her financial affairs. The Public Trustee was appointed initially, and was succeeded by one of Mrs C's grandchildren, Mrs D.

Mrs B was unhappy about the decision to appoint Mrs D and complained to us.

**We cannot look into complaints about who is appointed as receiver. This was a decision made by the Court of Protection and we are not able to comment on their decisions. Any challenge to the decision of the Court must be pursued by way of an appeal to the Court and is outside our remit.**

We did, however, examine the actions of the PGO in relation to the service they provided to the Court and other interested parties.

Mrs B complained that:

- the PGO had told her that the Court would expect all parties to agree before making a decision, but the Court had appointed Mrs D in spite of Mrs B's objections.
- the PGO had invited Mrs B to nominate someone from outside the family to act as receiver, but the PGO had failed to tell the Court the nominee's name. The Court had also not given any reason for not appointing Mrs B's nominee.
- Mrs B's brother had provided a list of people he would agree to being appointed as receiver but the PGO had not shown the list to Mrs B, even though there was one person on the list that would have been acceptable to her.
- the contents of letters she wrote to the PGO had been disclosed to Mrs D.
- the PGO failed to deal with her letters of complaint satisfactorily.

**Our investigation was delayed because it took the PGO almost four months to provide a report on the case. When our investigation began, it was clear to us that the PGO had handled the process of replacing the Public Trustee as receiver poorly. It seemed that the caseworker had been selective in the information he gave Mrs B, which had misled her into thinking that a non-family member would be appointed as receiver if the Public Trustee did not continue in that role.**

**The PGO did not follow the direction of the Court to show Mrs B her brother's list of nominees.**

**We recommended that the PGO apologise to Mrs B for their poor service and make payments of £50 to her for the frustration and inconvenience they had caused and £25 for her direct costs.**

**At our suggestion, the PGO also agreed to refer the case back to the Court, with all the information previously withheld by the caseworker, so that the Court could decide how best to resolve matters.**

**We could see that the PGO asked the Court several times for authority to disclose correspondence. It is not for us to comment on the decisions made by the Court about what information to release to whom. We could see that the PGO had acted on the instructions of the Court and within their own guidelines. We thought, however, that people writing to the PGO should be aware that their correspondence might be disclosed to others at the Court's discretion.**

**We could also see that Mrs B's MP had written to the PGO and that, during the same period, Mrs B herself had written four letters to the PGO's Customer Service and Complaints Unit. It is the usual practice for the Chief Executive of the PGO to reply directly to any correspondence from an MP.**

Only one of Mrs B's letters had been acknowledged on receipt. Also, no warning had been given that, as they were writing to her MP, the PGO would not reply directly to Mrs B as well. We recommended that the PGO apologise for these shortcomings and pay her £25 for the upset caused.

#### CASE STUDY

#### Sell! Sell! Sell!

Until the time of his death, Mr E had been a client of the PGO. Mrs E complained that the PGO took almost a month to deal with her solicitor's request to sell shares in her late husband's estate. As a result, the shares had dropped in value and compensation was claimed.

**We considered the PGO's actions against their Code of Practice, Complaints – putting things right if things go wrong.**

**The Code explains that the PGO will compensate losses resulting from any unreasonable delay. In the circumstances of Mrs E's complaint, we did not conclude that the time taken amounted to an unreasonable delay.**

**We did, however, conclude that the complaint had been handled poorly and classified it as partially upheld.**

**In addition, we were very concerned that the PGO were unable to locate their receivership file. As a result it took them over four months to provide us with a report on the complaint. Although the file was located after our investigation had concluded, we had been forced meanwhile to obtain copies of documentation from Mrs E's solicitor.**

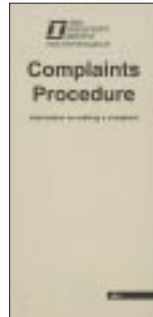
#### Looking ahead

At the year end, the PGO had made remarkable inroads into their backlog of post. We hope that the disappointing features of cases reported here are a legacy of those arrears of work and that our report next year will reflect wholesale improvements in what we see.





## The Insolvency Service



The Insolvency Service -  
Complaints Procedure.

Dame Barbara Mills signing the Service Level  
Agreement with Chief Executive and Inspector General  
of The Insolvency Service, Desmond Flynn.



Since taking on complaints about the Public Guardianship Office in April 2001, we are delighted to announce that our role continues to expand and, from April 2003, we will be looking into complaints about The Insolvency Service. The arrangements were formalised with the signing of a Service Level Agreement by the Adjudicator and The Insolvency Service Chief Executive and Inspector General, on 7 March 2003.

The Insolvency Service has been an Executive Agency of the Department of Trade and Industry since 1990. It has approximately 1,500 members of staff located in 34 offices throughout England, Scotland and Wales.

The Insolvency Service employs 38 Official Receivers in England and Wales. The Official Receiver's role, as an officer of the court dealing with insolvency, has been in existence since 1883.

It is the job of The Insolvency Service to administer and investigate bankruptcies and compulsory company liquidations in England and Wales\*.

The Insolvency Service deals with company director disqualifications in corporate failures and reports any suspected criminal offences it sees to the relevant authorities. It also regulates the insolvency profession and provides information to the general public about insolvency matters.

From 1 April 2003, it also took on responsibility for that area of work formerly performed by the Redundancy Payments Service.

We have published a new leaflet, A06, which gives information about how and when to make a complaint to the Adjudicator about The Insolvency Service, and the types of issues we can and cannot look into.

\* In Scotland the supervision of insolvency work falls to the Accountant in Bankruptcy. The Insolvency Service has no functions in Scotland except in relation to the Disqualification of Directors.

## Statistics

This year we took on for investigation 469 complaints. In 2001/2002 the total was 551. We completed 503 investigations.

### Outcome of complaints

	Upheld	Not upheld	Withdrawn	Total
2001/2002	226(39%)	305(54%)	42(7%)	573
2002/2003	233(46%)	256(51%)	14(3%)	503

### How complaints were handled

	Recommendation	Mediation	Withdrawn	Organisation Reconsidered	Total
2001/2002	373(65%)	153(27%)	42(7%)	5(1%)	573
2002/2003	328(65%)	160(32%)	14(3%)	1(n/a)	503

### Assistance cases

In 2002/2003, the Assistance Team answered 15,206 general enquiry telephone calls. These covered topics such as the telephone numbers of VAT and tax offices and information about complaints procedures.

This year we took on 2,283 complaints as assistance cases (these are cases where the organisation has not had a chance to consider the complaint and we refer the complaint back to the organisation).

## The Inland Revenue

The Adjudicator's Office leaflet A01 - How to complain about the Inland Revenue and Valuation Office Agency.



We took on for investigation 361 complaints about the Inland Revenue this year, a reduction of 8% over last year. We completed 364 investigations, compared with 418 last year.

We did not uphold the complaint in 190 cases. In 164 of the cases we investigated, we upheld the complaint either wholly or in part. 10 cases were withdrawn by the complainant before we completed our investigation.

224 complaints were resolved by recommendation and 130 through mediating a settlement that was acceptable to both sides.

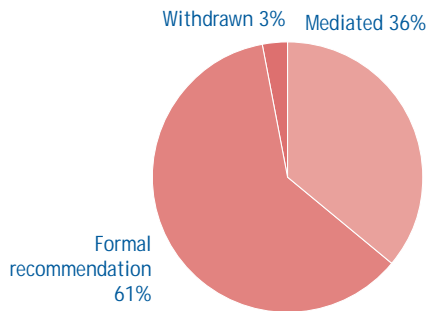
The Inland Revenue accepted all of the Adjudicator's recommendations.

We recommended the Inland Revenue pay a total of £357,407 to complainants this year, an increase of £238,480 on the previous year.

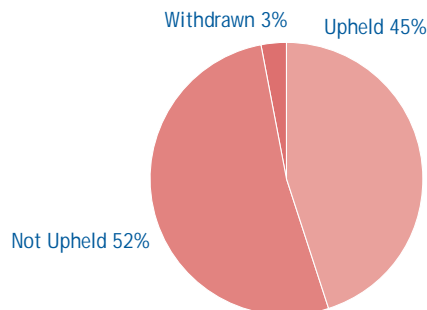
We recommended the Inland Revenue pay £49,002 compensation for costs arising from their mistakes or delays. We recommended the Inland Revenue make consolatory payments totalling £16,220 and payments amounting to £7,356 for poor complaints handling.

We recommended that the Inland Revenue give up tax or interest amounting to £284,829.

### How investigation cases were completed



### Result of completed investigation cases



## The Valuation Office Agency (VOA)

We took on for investigation 9 complaints about the VOA and we completed the same number of investigations.

We did not uphold the complaint in 4 cases. In 5 of the cases we investigated, we upheld the complaint either wholly or in part.

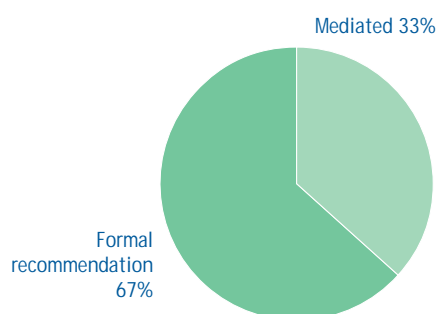
6 complaints were resolved by recommendation and 3 through mediating a settlement that was acceptable to both sides.

The VOA accepted all of the Adjudicator's recommendations.

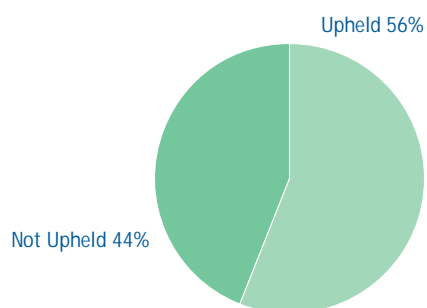
This year, we recommended the VOA pay a total of £3,590 to complainants, an increase of £202 on the previous year.

We recommended the VOA pay £3,040 compensation for costs directly arising from their mistakes. We recommended the VOA make consolatory payments totalling £450 and payments of £100 for poor complaints handling.

### How investigation cases were completed



### Result of completed investigation cases



## Customs and Excise

The Adjudicator's Office leaflet A02 - *How to complain about Customs and Excise.*



We took on for investigation 87 complaints about Customs and Excise, a decrease of 38% over last year. We completed 121 investigations compared with 138 last year.

We did not uphold the complaint in 61 cases. In 58 of the cases we investigated, we upheld the complaint either wholly or in part. 2 cases were withdrawn by the complainant before we completed our investigation.

93 complaints were resolved by recommendation and 26 through mediating a settlement that was acceptable to both sides.

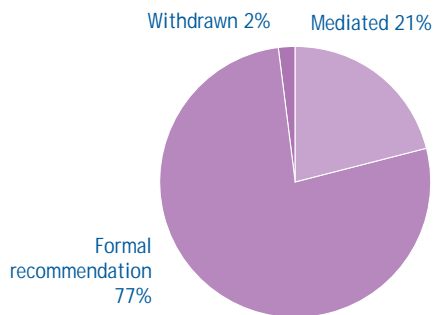
Customs and Excise accepted all of the Adjudicator's recommendations.

We recommended Customs and Excise pay a total of £85,419 to complainants this year, a decrease of £282,557 on the previous year.

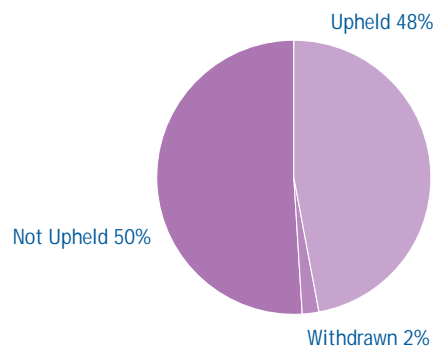
We recommended Customs and Excise pay £51,922 compensation for costs directly arising from their mistakes or delays. We recommended Customs and Excise make consolatory payments totalling £4,650 and payments amounting to £1,075 for poor complaints handling.

We also recommended that Customs and Excise give up VAT or interest amounting to £27,772.

### How investigation cases were completed



### Result of completed investigation cases



## Public Guardianship Office (PGO)



The Adjudicator's Office leaflet A05 - *How to complain about the Public Guardianship Office.*

We took on for investigation 12 complaints about the PGO and completed 9.

We did not uphold the complaint in 1 case. In 6 of the cases we investigated, we upheld the complaint either wholly or in part. 2 cases were withdrawn by the complainant before we completed our investigation.

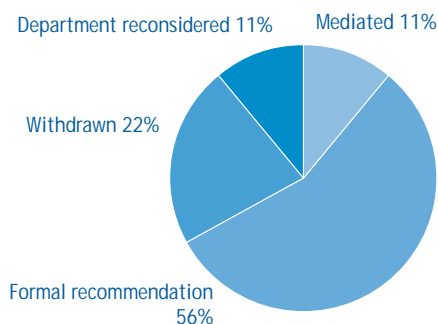
5 complaints were resolved by recommendation, 1 through mediating a settlement that was acceptable to both sides and, in 1 case, the PGO reconsidered its position.

The PGO accepted all of the Adjudicator's recommendations.

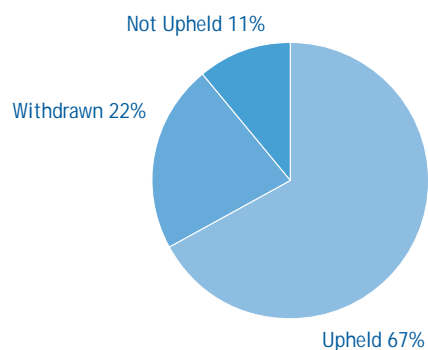
We recommended the PGO pay a total of £2,955 to complainants this year.

We recommended the PGO pay £2,380 compensation for costs directly arising from their mistakes or delays. We recommended they make consolatory payments totalling £450 and payments amounting to £125 for poor complaints handling.

### How investigation cases were completed



### Result of completed investigation cases



## Key Performance Measures and Targets

Performance Measures	2002/2003 Achievement	2003/2004 Targets
Achieve an overall satisfaction rating of 80% from complainants in assistance cases about the way we handled their complaints	75%	See note*
Achieve an overall satisfaction rating of 95% from the organisations' senior management about our arrangements for referring complaints to them	100%	See note*
Where a written response is required, deal with cases within an average of 7 working days, and all within 15 working days	3.24 days 100%	75% within 5 days 98% within 15 days
Achieve an overall satisfaction rating of 70% from complainants about our service	67%	See note*
Achieve an average age of not more than 4.5 months for cases awaiting settlement	2.97 months	16 weeks
Achieve an average case turnover time of 5 months and ensure that 98% of cases are closed within 12 months of opening an investigation	5.35 months 98.41%	23 weeks 98%
Settle 30% of the cases that we investigate by means of mediation	31.81%	30%
In investigation cases, deal with 90% of correspondence within 10 working days and all within 20 working days	100% 100%	90% 100%
Achieve a satisfaction rating of 85% about the quality and value of feedback in quarterly reports	100%	See note*
Achieve an overall satisfaction rating of 85% from the organisations' senior management about the quality and fairness of the information we provide to them about investigation cases	100%	See note*

\* All of our customer satisfaction targets are under review this year. For more on what our customers think of us, see the "How was it for you?" section of this report on pages 9 to 11.

## Customer Surveys

Over the last ten years, we have established that overall customer satisfaction is, broadly speaking, dependent on the outcome of our investigations. The time it takes for us to conclude our investigation and the way in which we keep people informed of our progress are other key factors for consideration.

### Investigation cases

Customers who were satisfied overall with the level of our service:

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Cases where complaints were wholly or partly upheld:

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% of customers satisfied overall	82%
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Cases where complaints were not upheld:

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% of customers satisfied overall	33%
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All cases	67%
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## Service Standards

### Providing Assistance

We will:

- give careful consideration to our remit and tell complainants at the earliest possible stage what we can and cannot look into, and advise them of their options where we cannot investigate their complaint,
- handle all enquiries in an efficient and courteous manner,
- make available a staffed telephone enquiry service between 9am and 5pm on working weekdays,
- operate an answerphone service outside office hours,
- deal with messages left on the answerphone by close on the following working day,
- maintain an up to date website, and
- exceptionally, facilitate early referral of cases to the Parliamentary Commissioner for Administration (PCA) - the Ombudsman - where appropriate.



### **The investigation**

We will:

- give the departments sufficient information to consider the complaint and, within 2 working days of the decision to take the complaint on for investigation, ask for a report,
- once a case has been taken on for investigation, but before allocation, ensure that the complainant and department are informed of progress at least every month, unless, exceptionally, this is inappropriate,
- ensure that, when the case is allocated to an Adjudication Officer, the complainant and the department are told within 7 working days and given the officer's name and telephone number,
- keep the complainant and department informed of progress during the investigation at least monthly, unless, exceptionally, this is inappropriate,
- make sure that any enquiries we make of the complainant or department are constructive, helpful, clear and complete, and
- make sure that any advice we give to the complainant or department is correct.

### **Our views on a complaint**

We will:

- where we have mediated a settlement of the complaint, clearly set out in a letter to the complainant and department the terms of the mediation,
- where we have not mediated a settlement, clearly set out in a letter to the complainant (and copy to the department) the Adjudicator's decision on the complaint, and the reasons for that decision, and
- tell the department of any action we recommend they take.

### **Closure and feedback**

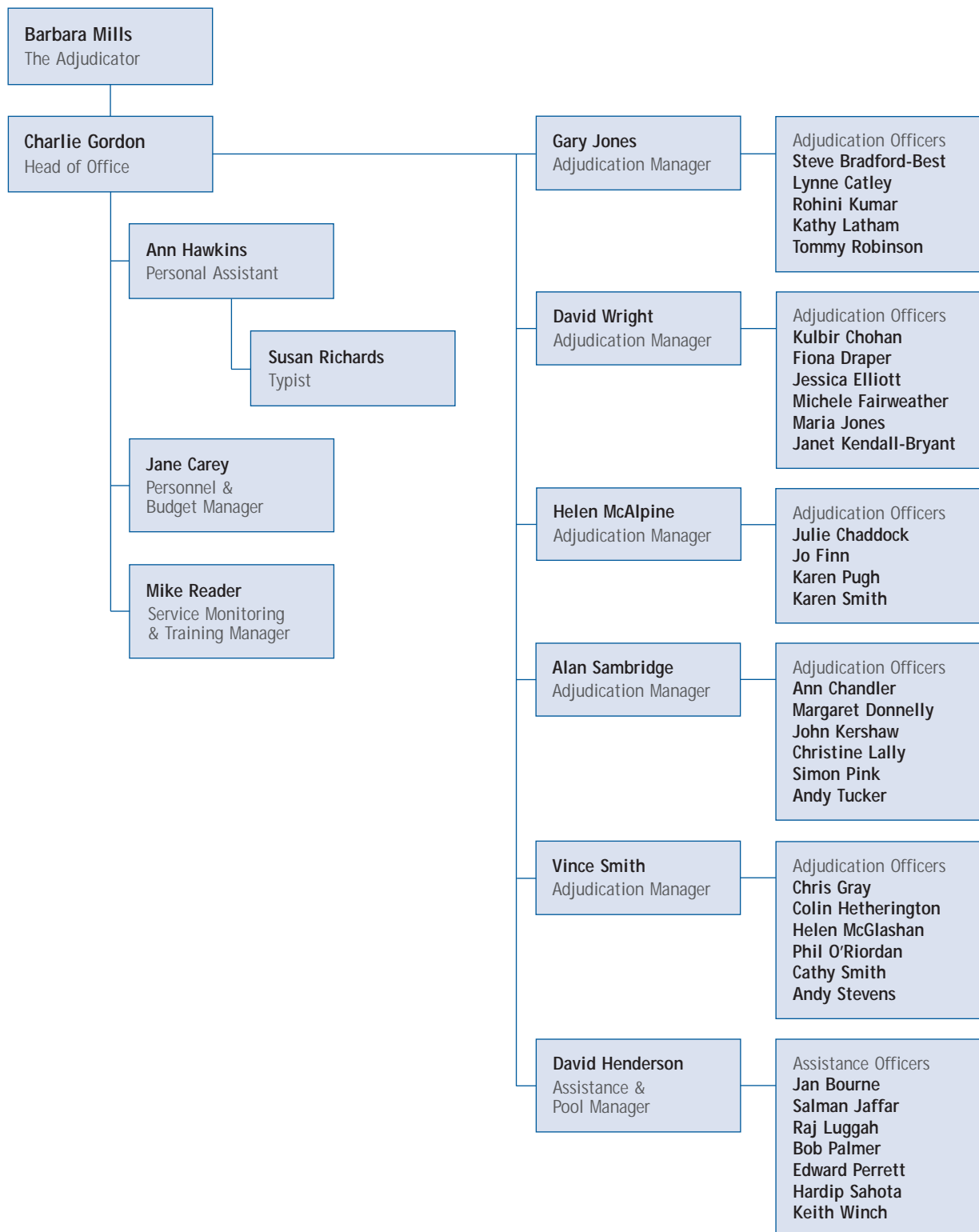
We will:

- tell the department the outcome of the investigation,
- tell the department how we have classified the complaint,
- follow up any action we have asked the department to take,
- ensure complainants are aware of their options should they remain dissatisfied, and
- ensure that we deal promptly and efficiently with any post-closure issues.

## Budget

	2002/03 Actual	2003/04 Estimated
Staffing Costs	£1,594,388	£1,941,685
Accommodation Costs	£423,727	£438,000
Other Running Costs	£153,719	£220,000
Capital Costs	£1,179	£4,500

## Staff Chart as at 31 March 2003



## Contact details

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Website [www.adjudicatorsoffice.gov.uk](http://www.adjudicatorsoffice.gov.uk)

## Publications

The Adjudicator's Office Annual Report

How to complain about the Inland Revenue and the Valuation Office Agency (A01)

How to complain about Customs and Excise (A02)

Meetings with the Adjudicator's Office: Notes for people making complaints (A03)

Meetings with the Adjudicator's Office: Notes for Inland Revenue and Customs and Excise staff (A04)

How to complain about the Public Guardianship Office (A05)

How to complain about The Insolvency Service (A06)





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INVESTOR IN PEOPLE

The Adjudicator's Office  
Annual Report 2003

