

The Adjudicator's Office

Annual Report 2005



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Contents

Foreword	2
Role of the Adjudicator's Office	5
Customer feedback	8
Staff Chart	12
Overview	13
The Inland Revenue	13
Customs and Excise	16
Valuation Office Agency	18
Public Guardianship Office	19
The Insolvency Service	20
Statistics	23
Inland Revenue	23
Valuation Office Agency	24
Customs and Excise	24
Public Guardianship Office	24
The Insolvency Service	25
Key Performance Measures and Targets	26
Budget	26
Case Summaries	27
Inland Revenue National Services	27
Inland Revenue Local Services	44
Customs and Excise	52
Valuation Office Agency	58
Public Guardianship Office	60
The Insolvency Service	62
Contact details	65
Publications	65

Foreword

by the Adjudicator Dame Barbara Mills DBE QC



I am pleased to present my Annual Report for the year to 31 March 2005, the sixth report covering my work as Adjudicator and the twelfth concerning the work of the office. More notably, it is also the final report in which we will distinguish between the work of the Inland Revenue and the work of Customs and Excise.

The transition from Inland Revenue and Customs and Excise into HM Revenue & Customs (HMRC) presents major challenges for the emerging organisation. Alignment of processes and functions to deliver the efficiency savings and improved customer focus envisaged in the O'Donnell Report is a huge undertaking. Inevitably, with a project of this size, some mistakes are likely along the way. My office will play a supportive role in encouraging the new organisation to recognise the need for excellent complaint handling as a key aspect of their customer service strategy.

It is, of course, imperative that the transition to HMRC does not result in significant disruption to the organisation's customers. We will continue to measure trends and provide feedback to HMRC so that the valuable lessons gained from complaints can be readily absorbed.

In July last year, the Department for Constitutional Affairs published its White Paper, *"Transforming Public Services: Complaints, Redress and Tribunals"*.

The paper sets out a challenging agenda for improving citizens' access to redress, notably the amalgamation of tribunals (including the current tax tribunals) into a single Agency. The recently published National Audit Office (NAO) report *"Citizens' Redress: What citizens can do if things go wrong with public services"* supports the thrust of these proposals. It also makes recommendations on how government organisations can deliver better value for money from their handling of complaints.

While I fully support the overall aims of these reforms, care must be taken to ensure that the best aspects of the current arrangements are not lost. Offices such as ours play a key role in helping to ensure that the organisations whose complaints we investigate deliver value for money from their complaints handling and that their customers get appropriate treatment when things go wrong. With this in mind, I look forward to working constructively with the new Tribunals Agency and other relevant bodies in taking this ambitious agenda forward.

I turn now to the year to March 2005. In my last report, I said that, by the end of the year, almost one third of all complaints that we received concerned Tax Credits. I also noted with some optimism that lessons learned by the Tax Credit Office (TCO) during the 2003/2004 year were being put to good use. It is, therefore, disappointing to report that this year over half of all the complaints received in my office concerned Tax Credits. Of the complaints investigated, over 80% have been upheld in the complainants' favour, either wholly or in part. We have also recently seen a marked increase in the number of Tax Credit complaints that we are taking up for investigation.

Two years have passed since the scheme's introduction and, clearly, the Tax Credit system is still not working well for many claimants. At the heart of many of the problems that we investigate is the sensitive issue of overpayments arising from Inland Revenue errors. In many of the cases that I have seen, this issue is exacerbated by other mistakes and problems, which are explored further in the Overview and Case Summary sections of this report.

“Two years have passed since the scheme's introduction and, clearly, the Tax Credit system is still not working well for many claimants.”

I am particularly disappointed to note that the difficulties in accessing the complaints system, which I mentioned last year, remain an obstacle to the claimant. Any system giving benefits and support to vulnerable people, such as those on low incomes, needs to be administered in a way that is sensitive to their needs. In my view, the Tax

Credit system is no exception and, in many of the cases that I have seen, this is something that the staff at the TCO have tried to achieve. In many instances, however, their best efforts are thwarted by a system that is too inflexible, making it difficult to put matters right quickly and cleanly once something has gone wrong.

The TCO have, since the period covered by this report, streamlined their processes for deciding whether an overpayment can be remitted. I see this as a welcome step forward, not only because it will mean such cases will be decided more quickly, but also as tangible evidence of a growing recognition within the new department that the system needs to improve. I look forward in the coming year to working with HMRC to help achieve this.

The transition to HMRC also coincides with the tenth anniversary of our invitation to investigate complaints about Customs and Excise. In this report we look back on what has been a fruitful working relationship with that organisation over the past ten years.

This year has seen little change concerning complaints about the Valuation Office Agency. The downturn in complaints upheld last year has continued, with only 25% upheld this year compared with 27% for the same period last year.

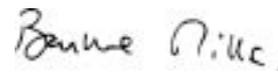
As to the other organisations that we investigate, the Public Guardianship Office and The Insolvency Service, we still receive a relatively small number of nonetheless challenging complaints. We will continue to work with both organisations to assist them in their efforts to provide high quality complaint handling for their customers.

This year has also seen the departure of Charlie Gordon, who held the post of Head of Office from September 1999. During his five

years at this office Charlie managed many challenging and fundamental changes, including the broadening of our scope to include complaints about the Public Guardianship Office and The Insolvency Service. I am grateful for the considerable support that he provided throughout his time at the office and I congratulate him on his prestigious appointment as Deputy Pensions Ombudsman. We warmly welcome Charlie's successor, Simon Oakes, who joins us at an interesting time as we commence working with HMRC.

I conclude, as ever, with my thanks to all staff in the Adjudicator's Office for their achievements over the past year. While complaints about Tax Credits have again

brought with them the inevitable distress and frustration experienced by the complainants, I have been impressed and heartened by the way in which the staff here have dealt with often difficult and emotional issues. It is a tribute to their skills and understanding that over 40% of investigations concluded this year were resolved by mediating a settlement that was acceptable to all parties involved. This office has always placed great emphasis on reaching agreement between the organisation and complainant through mediation and we are justifiably proud of our achievement. We have also completed 581 investigations this year, an increase of 22% on last year's total, which again reflects the hard work and commitment of all the staff in this office.



Dame Barbara Mills DBE QC
The Adjudicator



Role of the Adjudicator's Office

We investigate complaints from the public about the following organisations, where they have been unable to resolve matters themselves:

HM Revenue & Customs
The Valuation Office Agency
The Public Guardianship Office and
The Insolvency Service

Our aim is to deliver an excellent service that is:

- **Objective**
(fair, impartial and independent)
- **Accessible** (free to the complainant)
- **Value for Money**
(efficient, outcome driven)

Before we take on a complaint for investigation, we expect the organisation

concerned 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 final decision 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

“We measure complaints about the organisations against their own published standards and Codes of Practice.”



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.

How we work

Assistance work

When members of the public contact us to complain about the organisations, our Assistance Team is usually their first point of contact.

The Assistance Team's main roles are to:

- decide if the complaint concerns a matter within our remit for investigation
- ensure that the organisation has had the opportunity to consider the complaint fully.

They will then 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.

Our contact details appear prominently in many of the leaflets and publications produced by the organisations. This means that the Assistance Team often receives general enquiries from members of the public. Unfortunately, we do not have the resources to provide general advice to people about their particular circumstances. We do, however, try to provide people with contact details for the appropriate area of the organisation that can deal with their enquiry.

Investigation work

The Adjudication Officer will carry out a thorough examination of the evidence relevant to the complaint.

We resolve complaints by one of two methods:

- mediation



“When members of the public contact us to complain about the organisations, our Assistance Team is usually their first point of contact.”

- recommendation letter from the Adjudicator.

We attempt to resolve all complaints by mediation. This is because we believe that the mediation process, involving full discussion of the issues behind the complaint with both parties, offers the greatest value to all concerned. Our experience in this field also enables us to judge offers of redress, whether in the form of apology or compensation, realistically and sensibly.

This year, we have achieved a mediated outcome in over 40% of investigations, a further improvement on last year's figures.

It is not always possible, however, 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 "Recommendation" letters because they set out what, if anything, the Adjudicator "recommends" the organisation should do to resolve matters.

Although we cannot enforce them, to date, the organisations have accepted all of the Adjudicator's recommendations.

Working with the organisations

A key aspect of our work is helping the organisations to improve their service to the public. To ensure that mistakes are not repeated and that lessons are learned, we 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.

We are often invited by the organisations to comment on draft leaflets and instructions. We also host visits from staff who work in the organisations' complaint teams to share best practice and improve working relationships.

During 2004/2005, we worked extensively with both the Inland Revenue and Customs and Excise as they began shaping the new integrated tax department, HM Revenue & Customs. We will continue to work with the emerging organisation in the coming months and years to ensure that their approach to the handling of complaints is fair, consistent and focused on the needs of the customer.

Customer feedback

Our customers fall into two distinct groups:

- members of the public, or their appointed representatives, who wish to complain about the organisations that have asked us to investigate complaints about their service
- the organisations themselves, for whom we provide invaluable feedback and advice as they seek to improve their customer service generally.

The Public

This year, we have continued to provide information to the British Market Research Bureau (BMRB), who conduct customer satisfaction surveys with members of the public on our behalf, after we have completed our investigations.

Our last annual report recorded the results from the first year of our contract with BMRB to provide this service. We were generally encouraged by the high ratings that customers gave us concerning the clarity

of our communications and the service that we provide. We were, however, concerned by the information that we received about typical customer profile, which suggested that our customer base appeared to be predominantly white, middle-aged and male in composition.

We aim to provide a service that is accessible to the public at large. Our work does, however, reflect the prevalent areas for complaint within the organisations.



“We were generally encouraged by the high ratings that customers gave us concerning the clarity of our communications and the service that we provide.”

For example, we have, over the years, seen a consistent volume of complaints about tax coding and, more specifically, the application of Extra Statutory Concession A19, which, in certain circumstances allows for arrears of tax to be remitted.

In many such cases, agents, typically accountants, acting for the complainant will bring a complaint of this nature to us on their client's behalf. Generally speaking, a significant number of these agents, as well as a reasonable proportion of complainants that are un-represented, do appear to fall into the typical profile identified last year.

This year, however, has seen something of a change in terms of customer profile. Last year, only 21% of complainants surveyed by BMRB were female. This year, the corresponding figure has risen to 36%. While this is clearly a welcome change, it reflects the large volume of Tax Credit complaints that we investigated this year. We have also noted a drop in the average age of complainants, from 52 last year to 49 this year.

In many, but not all, Tax Credit cases, the complainant is the primary carer for children. In the majority of cases, this will be the mother. It would appear then, that the rise in the number of women surveyed by BMRB clearly reflects the rise in complaints about the Inland Revenue that we investigated last year, due mostly to complaints about Tax Credits.

Tax Credit complaints are appreciably different from the more typical Inland Revenue complaints that we have investigated over the years. The Inland Revenue certainly found the challenge of administering the Tax Credit system effectively very difficult, exposing them to a high volume of disgruntled claimants, some of whom are almost entirely dependent on

the correct award of their Tax Credit entitlement to budget their finances.

“ ...this year has seen an almost across the board improvement in terms of customer satisfaction ratings in general”

With different areas of work and different types of complainant come different customer expectations. We are pleased to note that this year has seen an almost across the board improvement in terms of customer satisfaction ratings in general. Again, this probably reflects the very high proportion of complaints about Tax Credits that we upheld, either wholly or in part.

The table on page ten provides a comparison between the results recorded in 2003/2004 and those for 2004/2005.

Customer Satisfaction Comparison

Question	Responses to April 2004	Responses to April 2005
Did the AO provide you with clear advice?	52% agreed either strongly or slightly.	69% agreed either strongly or slightly.
How would you rate the quality of written communication received from the AO?	80% answered within a range from 'Excellent' to 'Good'.	81% answered within a range from 'Excellent' to 'Good'.
How would you rate the quality of any telephone communication received from the AO?	66% answered within a range from 'Excellent' to 'Good'.	76% answered within a range from 'Excellent' to 'Good'.
How happy were you with the outcome of your complaint?	30% were either very or fairly happy.	42% were either very or fairly happy.
Would you agree or disagree that the AO fully explained their decision?	68% agreed either strongly or slightly.	82% agreed either strongly or slightly.
Would you agree or disagree that the AO investigated your complaint thoroughly?	61% agreed either strongly or slightly.	69% agreed either strongly or slightly.
How well was the mediation process explained to you?	79% said that it was explained either very or fairly well.	89% said that it was explained either very or fairly well.
How satisfied were you overall with the service that you received from the AO?	63% were either 'Very' or 'Fairly' satisfied.	66% were either 'Very' or 'Fairly' satisfied.

Rather than simply being reliant on the organisations to alert the public to the service that we provide, we will, in the coming year, continue to encourage a more diverse range of customers to bring their concerns to our attention. We will carefully review our processes and procedures to ensure that the service that we provide meets all of our customers' needs and expectations.

The Organisations

We continue to conduct six monthly email surveys of the senior managers with responsibility for complaints in the organisations.

Unfortunately, the last survey that we conducted resulted in only 50% of the surveys being completed. While we appreciate that the organisations, especially those that are now part of HMRC, are constantly working in a climate of change, we see the opportunity for comment on our working practices to be fundamental to ensuring that a strong working relationship develops. Without comments on our service, it is difficult for us to evaluate our working methods and the effects that these can have on the organisations we work with.

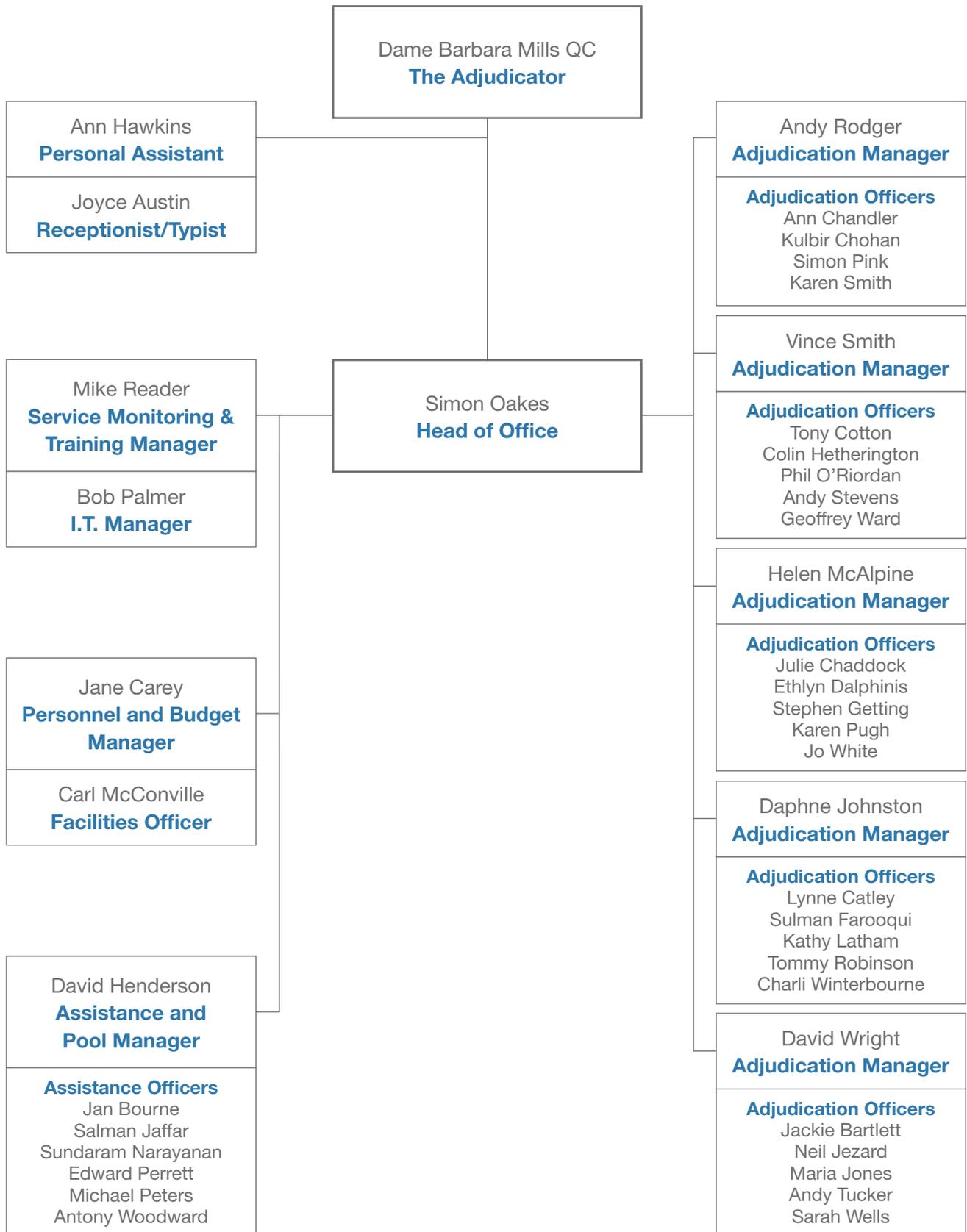
Although the response rates are low, we have gathered some useful feedback from the organisations and, where practical, we have acted to improve aspects of our administrative procedures. For example, we now acknowledge the receipt of organisational papers and files when we receive them in the office. This was suggested in response to the last survey that we issued.

We have also reminded our Adjudication Officers of the need to ensure that the organisations are kept fully informed of our negotiations with complainants when seeking to mediate the outcome of a complaint. This came in response to criticism concerning our communication of outcomes in such cases to the organisations.

In summary:

- **94%** of the organisations' senior management were satisfied with our arrangements for referring cases to them
- **83%** of the organisations' senior management were satisfied with the quality and value of information we provided to them about investigation cases.

Staff Chart as at 31 March 2005



2004/2005 - an overview

The Inland Revenue

In the foreword to our last annual report, the Adjudicator noted an improvement across the Inland Revenue as a whole, with the proportion of upheld complaints, which had steadily increased in the preceding three years, falling from 45% to 35%.

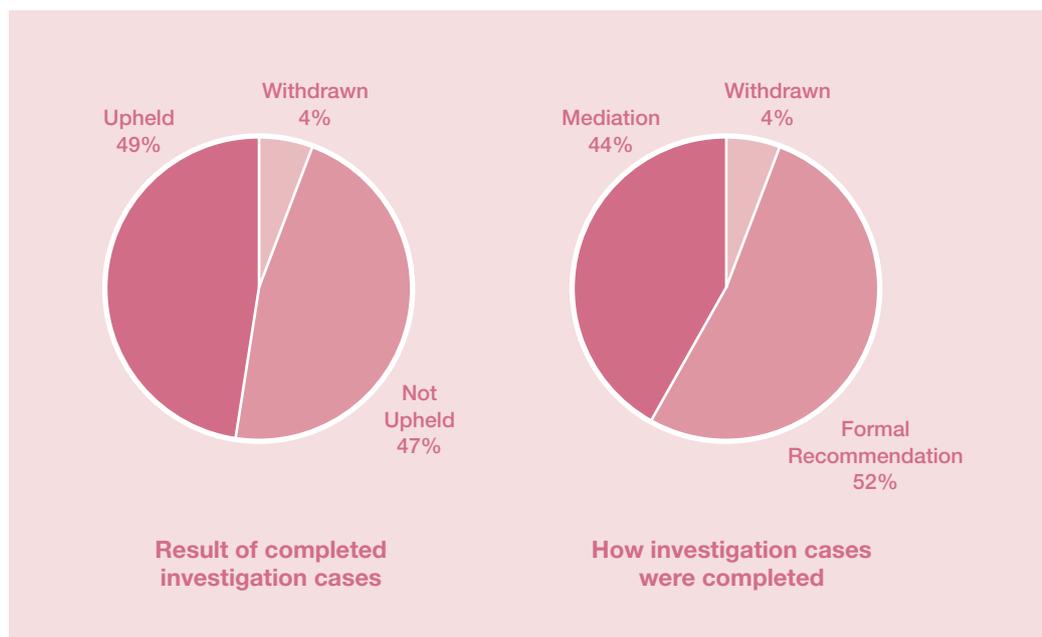
Unfortunately, this downward trend did not continue into the year covered by this report, which saw 49% of complaints about the Inland Revenue upheld, either wholly or in part. This is due to a large increase, which was particularly marked towards the end of the year, in the number of Tax Credit complaints. Of the Tax Credit investigations completed, 86% have been upheld in the complainant's favour. Many of these complaints concerned the Tax Credit Office (TCO)'s handling of overpayments arising from an Inland Revenue mistake.

In their Annual Report and Accounts to 31 March 2004, the Inland Revenue acknowledged that a software error on the

Tax Credits computer system resulted in the overpayment of Tax Credits to some 455,000 households, amounting to approximately £94 million. A decision was made to write-off individual payments of less than £300 (worth approximately £37 million). Of the £57 million that remained recoverable, the Inland Revenue flagged up a potential further write-off of £8 - £14 million on the basis that some Tax Credit claimants could successfully maintain that their overpayment resulted from a mistake by the Inland Revenue.

The Inland Revenue's policy on these further write-offs was set out in Code of Practice 26 *What happens if we have paid you too much Tax Credit?*, which states that:

“Claimants are often left confused and frustrated by the lack of clear information on their Tax Credit award notices.”



"We may decide that you should not be asked to pay back all or part of an overpayment if

- you were paid too much because of a mistake by us and it was reasonable to think that your award was right or
- it would cause hardship to you or your family if you had to pay the Tax Credit back. We may also accept payment over a longer period of time in a case of this kind".

In our last annual report, we said that we were confident that claimants, faced with the prospect of an overpayment being clawed back, would be made aware of the terms of Code of Practice 26 and how it could be applied to them. In the event, Code of Practice 26 was only introduced towards the end of the 2003/2004 tax year, with accompanying guidance for TCO staff following somewhat later. This resulted in a backlog of cases awaiting consideration by the TCO, with complainants often left in limbo. In some instances, payments were stopped altogether in order for the Inland Revenue to recover overpayments and those who wanted to pay money back to the Inland Revenue found that they could not easily do so. There have also been occasions where our investigations have been delayed by the TCO's failure to consider adequately the provisions of the Code of Practice at the appropriate time during their handling of a complaint.

A key factor in deciding whether Code of Practice 26 applies in most cases is the information sent to the claimant by the Inland Revenue in the form of an award notice. We have raised concerns about the format of these. It is clear from many of our investigations that claimants are often left confused and frustrated by the lack of clear information on their award notices. While there have been some welcome changes to the format of the notices in 2004/2005, we

consider that further changes are required to ensure that Tax Credits claimants can understand both how their award has been calculated and whether they have been over or underpaid.

We have investigated a number of cases where claimants have received multiple award notices, sometimes with more than one being issued on the same day, containing conflicting information. In such cases it is virtually impossible for claimants to know how much they should be receiving and it is not surprising that people react with dismay on learning that substantial overpayments have accrued. The problem is often compounded by the difficulties that many claimants contend with when they try to contact the Tax Credit Helpline, which frequently experiences a very high volume of traffic. Unfortunately, we have also seen instances where the advice given to claimants by the Helpline has been misleading or incorrect.

Other recurring themes in our investigation of complaints about Tax Credits include:

- failure by the Inland Revenue to update claimants' records
- delays in claimants receiving their correct entitlement
- payments made to the wrong bank account
- general difficulties in contacting the Tax Credit Helpline to report problems or changes in circumstances
- confusion of identity between different claimants
- differing interpretations of Code of Practice 26.

Underlying these problems is a clear and ongoing link between difficulties with the operation of the Tax Credits computer system and issues such as overpayments

and the sometimes poor administration of payments. In some cases, claimants' children have not been registered by the system, resulting in people being told that they are not eligible for the award of Tax Credits when, clearly, they are. We have also seen instances where claimants have notified the Inland Revenue of changes in their circumstances only to find that their partner's income has been omitted from the recalculation of their award, resulting in an overpayment.

A particular source of difficulty with the computer system itself is its inability to accommodate manual payments by giro, or cheque. Where a claimant has experienced problems with their claim, the TCO sometimes needs to resort to making manual payments to help put the case back on track. In many of the complaints we have seen, such cases cannot subsequently revert back to automated payments into a claimant's bank account without the system automatically generating duplicate payments.

These shortcomings of the computer system also make it difficult for TCO staff to obtain a full picture of what has happened when problems occur and then to take the necessary steps to put things right. This in turn impacts on how they handle complaints. This is particularly worrying as a significant proportion of the complaints that we receive about Tax Credits are from claimants on low incomes, who require a clear, stable and accurate picture of exactly how much they will receive under the system in order to budget their finances. Regrettably, we have seen cases where vulnerable people have been left worried and distressed by overpayments that have accrued despite their best efforts to put matters right.

In our experience, it is often only when the TCO makes a report to us that the full picture is established. Failure by the TCO to take a considered view of a complaint at a much

earlier stage in its life means that, by the time we receive their report, they will, often for the first time, have readily acknowledged their mistakes. A side effect of this is the very high proportion of Tax Credit complaints that come to us which we settle by mediation.

Failure to obtain the full picture at an early stage in the complaints process means that the TCO's dedicated complaints team must compile reports that can be both time consuming and staff intensive. This, together with the high volume of complaints, has resulted in delays in the TCO making their papers and reports available to us, which has impacted adversely on our investigation turnaround times.

The situation on delays in receiving reports has recently improved and we are working with the TCO to establish how we can best handle the recent increase in Tax Credit complaints. They have recently streamlined their handling of claims for overpayments to be written off under Code of Practice 26. We see this as a welcome development that will hopefully have an impact on the number of Tax Credit complaints coming to us in the future.

The high volume of Tax Credit complaints has, inevitably, resulted in a significant increase in the total number of complaints received about the Inland Revenue. In our last annual report, we noted a 3% increase in the number of complaints about the Inland Revenue that were taken up for investigation. This year, there has been an increase of 48%. We successfully mediated the outcome of 44% of the cases that we investigated, compared to 35% last year, which again reflects the significant number of Tax Credit investigations concluded by this method.

While complaints about Tax Credits accounted for 67% of the total number of complaints about the Inland Revenue that

we received this year, we have continued to receive a proportionally high number of complaints about the difficulties that people experience with their tax code. The second highest proportion of Inland Revenue complaints received by the office in 2004/2005 concerned tax codes in general but, more specifically, many of these cases concerned taxpayers who underpaid tax as a result of an incorrect tax code being applied to their earnings.

A general feature of such cases was the Inland Revenue's application of their Extra Statutory Concession A19 (ESC A19), which allowed them to give up arrears of tax. This concession, however, will only apply in cases where certain conditions are met. Further details of the sorts of issues arising from complaints about ESC A19 can be found in the case summaries section of this report, which also contains details of some of the complaints that we have investigated about other parts of the organisation, including the TCO. The third

main source of complaints about the Inland Revenue in 2004/2005 concerned the way in which they handled investigations or enquiries.

As this is the final year in which the office will report on the work of the Inland Revenue in its current form, it is perhaps an appropriate time to look back to our first annual report, covering the period from 5 May 1993 to 31 March 1994. The office noted that:

"We have found throughout (the Inland Revenue) a growing recognition of the importance of customer service and a desire to learn from their mistakes"

Reflecting on her first year as Revenue Adjudicator, Elizabeth Filkin noted the commitment of staff at all levels to increasing this emphasis on good customer service. In the years that followed, a constructive and professional relationship developed between the Inland Revenue and the Adjudicator's Office and we look forward to continuing this relationship as HMRC evolves.

Customs and Excise

As with the Inland Revenue, this report will be the last to record our dealings with Customs and Excise as a department in its own right. Coincidentally, this report also marks the tenth anniversary of our involvement with complaints about Customs and Excise

Over the first six years, from 1995/1996 to 2000/2001, around 80% of the complaints received about Customs and Excise concerned VAT matters, with the remainder concerning the travelling public's face to face dealings with Customs and Excise officers at ports and airports. In 2001/2002, however, we experienced a 45% increase in complaints about Customs and Excise compared with the previous year, with almost 40% of those relating to excise matters. This trend continued into 2002/2003, when around 55% of complaints received concerned excise matters. This, of course,

coincided with Customs and Excise's concerted effort to tackle cross-border smuggling of alcohol and tobacco, the so-called "booze cruise" phenomenon.

For 2003/2004, we reported something of a return to 'business as usual' with 70% of complaints received relating to VAT matters. In 2004/2005, we received 85 new complaints about Customs and Excise, a reduction of 13% on the previous year. Of these complaints, VAT related issues again accounted for nearly 61% of the total number received.

The single most dominant subject for complaints within the area of VAT remains the claim that Customs and Excise have misdirected a VAT registered trader, or otherwise provided misleading advice. The nature of VAT, coupled with the way in which Customs and Excise seek to assure its correct treatment, means that there is always considerable scope for such complaints to arise, especially as traders have no recourse to a VAT and Duties Tribunal in these matters.

As noted in previous years, very few complaints reach us about the seizure of Class A drugs, firearms or pornographic material. Such items are, of course, prohibited whatever the quantity and there is little scope for genuine misunderstandings.

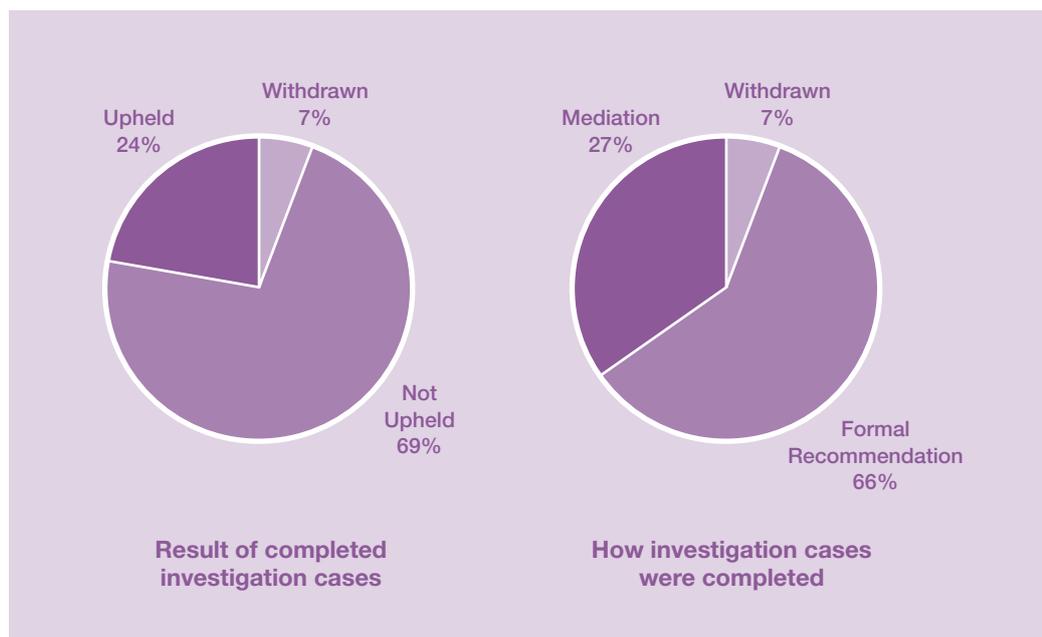
There are limits to what we can do in instances where Customs officers have seized cigarettes or alcohol from people entering the country from abroad. Legal routes exist to determine the validity of such seizures and whether Customs and

Excise have acted reasonably when refusing to return goods. In these circumstances, our investigations tend to be restricted to considering whether or not Customs officers have followed their own guidance properly and investigating claims about staff attitude.

Summaries of some of the investigations that were completed in 2004/2005 can be found later in this report, covering both VAT matters and complaints about law enforcement activity.

Throughout the ten years of our involvement with Customs and Excise, the department was subject to many changes, though none so fundamental as the transition to HMRC. It is to their credit that customer service was a driving force in their aims and objectives and that they have always been receptive to our suggestions for service improvements. Former Customs and Excise staff involved in complaint handling bring a wealth of good practice to HMRC, which will stand the organisation in good stead for the future.

“Former Customs and Excise staff involved in complaint handling bring a wealth of good practice to HMRC”.



Valuation Office Agency

The Valuation Office Agency (VOA)'s status as an executive agency of the Inland Revenue is not affected by the transition to HMRC. It will continue to operate in exactly the same fashion as before, as an agency of the new organisation.

In addition, however, to the VOA's existing workload and responsibilities, there are significant challenges ahead for the VOA in terms of:

- the revaluation of non-domestic properties in England and Wales, which comes into effect from 1 April 2005
- Council Tax revaluation in Wales, also with effect from 1 April 2005
- Council Tax revaluation in England from 1 April 2007.

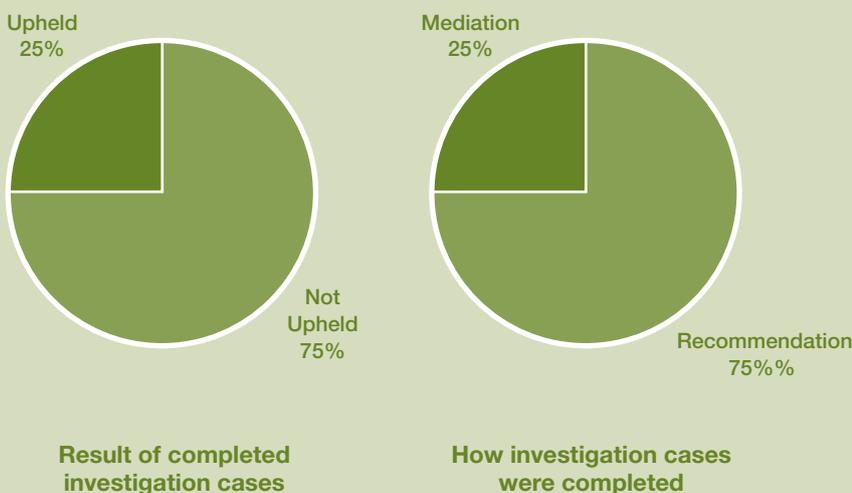
Exercises of this magnitude will, inevitably, create the potential for complaints and disputes to arise. None of these valuation issues, however, will fall within our remit for investigation as independent tribunals exist to consider disputes about Council Tax banding and non-domestic rating valuation.

While we cannot look into complaints about the valuation of properties and Council Tax banding, we can investigate complaints about handling issues such as:

- mistakes
- delays and
- staff attitude

We can also investigate whether the VOA has followed the correct procedures when carrying out valuations.

Turning now to the year covered by this report, we completed 12 full investigations, one more than in 2003/2004. As with last year, we did not wholly or substantially uphold any of these complaints, of which an impressive 75% were not upheld. These statistics almost mirror those recorded for the VOA in the 2003/2004 tax year, when 27% of cases were partially upheld.



“We continue to maintain good dialogue with the VOA, which remains receptive to our recommendations and suggestions.”

Public Guardianship Office

This year has seen a decrease in the number of complaints that we have investigated about the PGO. Last year, we concluded 17 investigations about the office, whereas this year the comparable figure was 13.

In our last annual report, we noted with some satisfaction that the percentage of complaints about the PGO that were upheld, either wholly or in part, had decreased from 67% in the 2002/2003 tax year to 47% in 2003/2004. This year, the percentage of complaints upheld was 54% but, with such a small number of cases overall, we would not regard such a fluctuation as a matter for concern. We would only wish to comment on the position if it appeared to be part of a continuing trend.

Although we have seen some evidence to suggest that the PGO are taking complaints more seriously in the early stages, ensuring that fewer escalate to this office, there is still some more to do before they provide a level of customer service comparable to the other organisations that we work with.

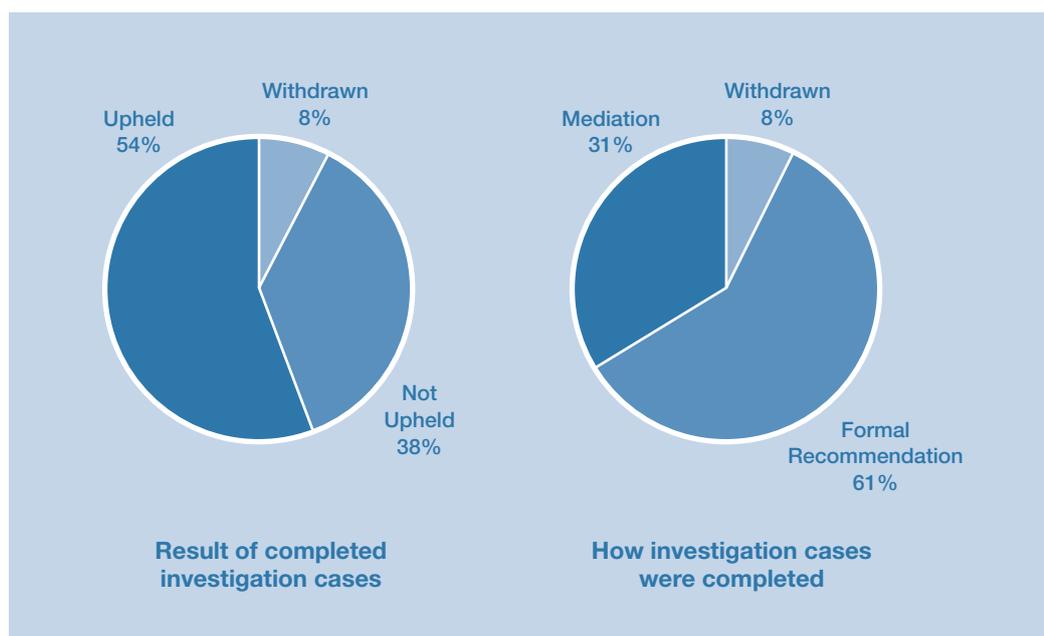
On a more positive note, now that the backlog of cases following the reorganisation of the PGO in 2001 has abated, we are receiving reports and departmental papers more promptly. Also, despite the relatively high proportion of complaints upheld, we do see more instances where the complaint has been fully considered before it reaches this office.

This is, of course, encouraging but, unfortunately, we are still seeing many cases where the basic handling of a complaint leaves much to be desired.

For example, we often see issues such as:

- delay in replying to complainants' correspondence
- failure to tell complainants about the service provided by the Adjudicator's Office if they remain dissatisfied with the PGO's response

“We do see more instances where the complaint has been fully considered by the PGO before it reaches this office.”



- failure to make notes of telephone calls
- letters missing from files.

In addition to these relatively simple omissions, we also identified a discrepancy between the PGO's Code of Practice – *Putting things right* and instructions to PGO staff in the form of an office notice concerning levels of payment to recognise complainants' worry and distress. This in turn resulted in confusion and inconsistency of approach to the handling of complaints where such payments were appropriate.

We asked the PGO to ensure that their internal instructions mirror the information that the public receives in their Code of Practice. We are pleased to report that they

have now taken the necessary steps to ensure that this issue is addressed.

Over the past year, we continued to build on the existing links that we have developed with the PGO. In October 2004, staff from this office attended a training day with the PGO, combining a visit to their offices in north London. We have also held case conferences to discuss specific issues and these have proved to be mutually beneficial, especially as there has been considerable turnover of staff dealing with complaints at the PGO in the last 12 months. We will continue to maintain these links over the coming year, providing feedback and advice to the organisation to assist in its efforts to improve customer service.

The Insolvency Service

In our last annual report, we said that our first year looking at complaints about The Insolvency Service had been relatively quiet. We acknowledged, however, that as we would not be looking at complaints arising prior to 1 April 2003, it was inevitable that it would take some time before we began to see a steady flow of referrals to this office. Looking forward to this year, we said that we expected our involvement with Insolvency Service related complaints to grow considerably.

One year on and it appears that our expectation has not been realised. Last year, we took on ten complaints for investigation and completed three. This year, we took on 11 complaints, somewhat fewer than we expected and completed 14. We will continue to monitor this situation, seeking to ensure that those with complaints falling within our remit are given a clear signpost to our service at the appropriate time.

Although the number of complaints about The Insolvency Service that we have investigated is relatively small, we have still had opportunities to influence their working practices. A good example is the role that we

played in discussions that led to their implementing a different approach to cases falling for action from their "protracted realisations register".

In the late 1980s and early 1990s, The Insolvency Service placed many properties with negative equity, in which a bankrupt previously had an interest, onto a protracted realisations register. This allowed The Insolvency Service to review properties on the register at a later date to see whether the property had yet acquired any significant equity, which could then be realised for the benefit of creditors.

In the past, when The Insolvency Service reviewed this register periodically and identified properties that had gained significant positive equity, they appointed an Insolvency Practitioner to realise that equity. Notification was sent to the former bankrupt, letting him or her know of the appointment. This could, of course, happen many years after the original Bankruptcy Order was made and, in the majority of cases, after the bankrupt had been discharged.

In some cases, given the passage of time, the former bankrupt genuinely believed that the trustee no longer had an interest in the property. This often meant that they did not have the opportunity to consider the options that were available to them before having to contemplate the rising costs associated with the sudden and, perhaps unexpected, appointment of a private sector Insolvency Practitioner.

The Enterprise Act 2002, which came into force on 1 April 2004, contained provisions that changed the way in which the Official Receiver could deal with a bankrupt's interest

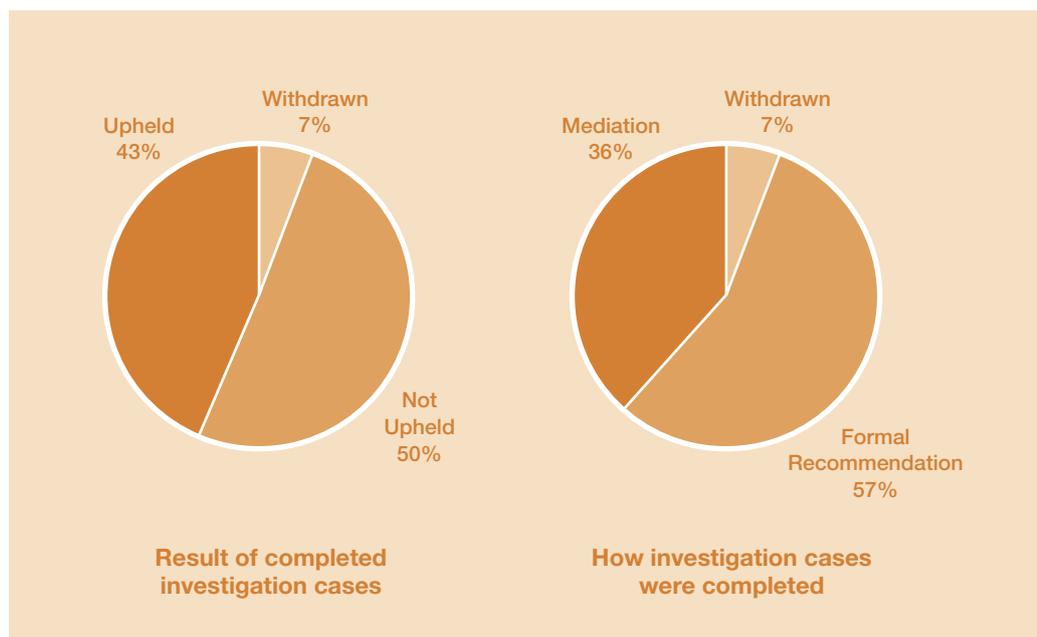
in a property. The provisions mean that the Official Receiver has to deal with his interest in a bankrupt's property within three years of the Bankruptcy Order. The wider implication of this was that The Insolvency Service had to deal with all of the property cases maintained on the protracted realisations register by 31 March 2007.

In view of the number of properties that were held on the register, The Insolvency Service agreed with our view that their current procedures were not acceptable.

Having considered the matter carefully, The Insolvency Service agreed to send a letter to all former bankrupts whose property remained on the protracted realisations register, which:

- fully apprised them of the current position
- reminded them why the property remained as an asset in their bankruptcy estate
- detailed the options that were available to them and

“We were pleased to have had the opportunity to influence The Insolvency Service’s policies and practices.”



- gave them a six-week period of time to consider these options before seeking the appointment of an Insolvency Practitioner.

This information gave former bankrupts the chance to consider fully the options available to them and sought to minimise the costs associated with such an appointment, should the former bankrupt choose, belatedly, to seek an annulment of the Bankruptcy Order, or attempt to raise funds to buy out the trustee's interest in the property.

The Insolvency Service has informed us that the general response from former bankrupts to this notice was very

encouraging, with many former bankrupts obtaining an annulment of the bankruptcy and many more actively seeking to buy back the trustee's interest in the property.

As well as the action taken above, The Insolvency Service has now agreed to issue a copy of their leaflet, "*What will happen to my home?*" to every bankrupt with their initial appointment letter for both telephone and face-to-face interviews.

We were pleased to have had the opportunity to influence The Insolvency Service's policies and practices in this area, and we welcome the positive outcomes.



Simon Oakes
Head of Office

Statistics

This year we took on for investigation 674 complaints. In 2003/2004, the total was 511.

We completed 581 investigations, compared to 475 last year.

Outcome of complaints

	Upheld	Not upheld	Withdrawn	Total
2003/2004	166 (35%)	289 (61%)	20 (4%)	475
2004/2005	259 (45%)	297 (51%)	25 (4%)	581

How complaints were handled

	Recommendation	Mediation	Withdrawn	Total
2003/2004	296 (62%)	159 (34%)	20 (4%)	475
2004/2005	321 (55%)	235 (41%)	25 (4%)	581

Assistance cases

In 2004/2005, the Assistance Team answered 14,725 general enquiry telephone calls. These covered topics such as questions about VAT returns and requests for telephone numbers of tax offices, as well as information about complaint procedures.

This year we took on 4,903 complaints as assistance cases (these are cases where the organisation has not had a chance to consider the complaint, and we refer it back to the organisation to deal with).

Inland Revenue

We took on for investigation 554 complaints about the Inland Revenue this year, an increase of 48% over last year. We completed 450 investigations, compared with 355 last year.

We did not uphold the complaint in 212 cases. In 221 of the cases we investigated, we upheld the complaint either wholly or in part. 17 cases were withdrawn by the complainant before we completed our investigation.

235 complaints were resolved by recommendation and 198 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 £213,482 to complainants this year, an increase of £24,144 on the previous year.

We recommended the Inland Revenue pay £61,721 compensation for costs arising directly from their mistakes or delays. We also recommended payments totalling £14,345 for worry and distress and payments amounting to £10,375 for poor complaints handling.

We recommended that the Inland Revenue give up tax, interest and overpaid Tax Credits amounting to £127,041.

Customs and Excise

We took on for investigation 85 complaints about Customs and Excise, a decrease of 13% over last year. We completed 92 investigations, compared with 89 last year.

We did not uphold the complaint in 64 cases. In 22 of the cases we investigated, we upheld the complaint either wholly or in part. Six cases were withdrawn by the complainant before we completed our investigation.

61 complaints were resolved by recommendation and 25 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 £33,366 to complainants this year, a decrease of £38,833 on the previous year.

We recommended Customs and Excise pay £31,716 compensation for costs directly arising from their mistakes or delays.

We also recommended Customs and Excise make payments totalling £1,275 for worry and distress and payments amounting to £375 for poor complaint handling.

Valuation Office Agency (VOA)

We took on for investigation ten complaints about the VOA this year, a decrease of 23% over last year. We completed 12 investigations, compared with 11 last year.

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

Nine complaints were resolved by recommendation and three 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 £320 to complainants, a decrease of £30,086 on the previous year.

We recommended the VOA pay £40 compensation for costs arising directly from their mistakes. We recommended the VOA make payments totalling £50 for worry and distress and payments of £230 for poor complaints handling.

Public Guardianship Office (PGO)

We took on for investigation 14 complaints about the PGO and completed 13.

We did not uphold the complaint in five cases. In seven of the cases we investigated we upheld the complaint either wholly or in part. One case was withdrawn by the complainant before we completed our investigation.

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

The PGO accepted all of the Adjudicator's recommendations.

We recommended the PGO pay a total of £3,390 to complainants this year.

We recommended the PGO pay £2,065 compensation for costs directly arising from their mistakes or delays. We recommended they make payments for worry and distress totalling £925 and payments amounting to £400 for poor complaints handling.

The Insolvency Service

We took on for investigation 11 complaints about The Insolvency Service and completed 14.

We did not uphold the complaint in seven cases. Of the other seven cases that we investigated, six were partly upheld and one was withdrawn.

Eight complaints were resolved by recommendation, five through mediating a settlement that was acceptable to both sides.

The Insolvency Service accepted all of the Adjudicator's recommendations.

We recommended The Insolvency Service pay complainants a total of £75 for worry and distress this year.

Key Performance Measures and Targets

Description	2004/2005 Targets	2004/2005 Results
Provide a written response to correspondence (<i>assistance cases</i>) where needed	70% within 5 working days 95% within 15 working days	94.33% 99.64%
Average age of open investigation cases	15 weeks	10.72 weeks
Provide a written response to correspondence (<i>investigation cases</i>) where needed	90% within 10 working days 99% within 20 working days	94.84% 99.50%
Average investigation case turnaround time	22 weeks	20.74 weeks
Time taken to close investigation cases	98% within 12 months	99.83%
Seek to mediate the outcome of complaints wherever possible	30% of cases settled by mediation	40.45%

Budget

	2003/2004 Actual	2004/2005 Estimates	2004/2005 Actual
Staffing	£1,843,581	£1,826,020	£1,756,050
Accommodation	£429,301	£470,000	£517,375
Other Operating Costs	£155,371	£190,000	£97,517
Capital	£1,231	£4,300	£4,029
Total	£2,429,484	£2,490,320	£2,374,971

HMRC went live on 18 April 2005 and budget transfers for Customs and Excise and Inland Revenue were still under negotiation when this report was in production. We are, therefore, unable to provide a useful estimate of costs for 2005/06 at this stage.

Case summaries

Inland Revenue National Services

The Inland Revenue's National Services was an umbrella title for the following key areas of the department's work.

- **Tax Credit Office (TCO)** managed the delivery and administration of Child Tax Credit (CTC) and Working Tax Credit (WTC)
- **Child Benefit Office (CBO)** managed the delivery of Child Benefit and Guardian's Allowance
- **Inland Revenue Contact Centres** located throughout the United Kingdom provided telephone Helpline services
- **Receivables Management Service (RMS)** provided a streamlined specialist business service for the collection of tax and handling of debt. RMS also played an important role in encouraging taxpayers to comply with their statutory obligations
- **National Insurance Contributions Office (the Office)** maintained and safeguarded accurate National Insurance accounts

While the work of these offices will continue under HM Revenue & Customs, it is still too early for us to know where these operations will sit in terms of the new business structure.

The following sections illustrate the sorts of complaints that we have investigated about these different offices.

Tax Credit Office case summaries

In our last annual report, we noted that the year in question had been very difficult for the TCO. It is clear from the Overview section of this report that the 2004/2005 tax year has proved no less challenging.

The following case summaries provide examples of the typical issues that have become a recurring feature in our investigation of complaints about Tax Credits.

TCO case summary 1

Ms A received Income Support for a number of years before starting work and completing a claim form for Tax Credits in April 2003. When she completed her claim

form, Ms A requested that her payments be made directly to her building society account, supplying the relevant account number.

When the TCO tried to process Ms A's claim, they found that they needed some further information from her employer. Although a decision on her award could not be issued until June 2003, Ms A was able to collect some interim payments from her local tax office.

Once they received the necessary information from her employer, the TCO processed Ms A's claim form. Unfortunately, the computer system could not read the format of her building society account number correctly. This meant that, although

Tax Credit Office case summaries

her payments were made directly to the correct building society, they were not paid to the correct account. Instead of going into her account, the payments, amounting to £1100, were incorrectly sent to the building society's Head Office account.

When Ms A telephoned the Tax Credit Helpline to query why she had not received any payments, she was wrongly advised that the Inland Revenue did not have her account number. Although they subsequently updated her records to show the correct account number, it took until September 2003 before the Inland Revenue replaced the £1100 that they had failed to pay into her account. The computer system then treated this payment as an additional payment rather than a replacement, which made it appear that she had been overpaid. This in turn reduced her Tax Credit award, which was not rectified for a further two months.

Ms A's circumstances changed twice during the 2003/2004 tax year, which altered her award. In addition, the interim payments that she collected from her local tax office earlier in the year were not immediately included in her award calculations. When they were belatedly included, it resulted in a further reduction to her award at a time when Ms A was no longer working and reliant on Income Support.

When the Department for Work and Pensions (DWP) calculate entitlement to Income Support, it is assumed that the CTC award will remain the same throughout the year. In Ms A's case, however, her award had been reduced to recover an amount that was overpaid earlier in the year. This meant that she was actually receiving much less than the £38 that was included in her Income Support calculation. Ms A complained that this resulted in her and her family suffering considerable hardship.

In addition, Ms A received 35 different award notices from the Inland Revenue during 2003/2004, which showed different calculations. She complained that, due to the obvious confusion generated by this number of award notices, she found it impossible to know what her correct entitlement was, which, in turn, made it impossible for her to budget properly.

By the end of the tax year, in spite of the numerous adjustments to Ms A's award, an overpayment of over £900 had arisen.

We upheld this complaint.

We felt that the TCO should waive Ms A's entire overpayment, including the amount already recovered through in-year adjustments to her award. It was clear that the overpayments occurred as a result of mistakes made by the Inland Revenue and that, given the number of different award notices that she received, Ms A had no way of knowing her correct entitlement.

The TCO accepted that they should waive the entire overpayment. They also agreed with our view that the Inland Revenue's mistakes had resulted in considerable worry and distress for Ms A. They agreed to pay her £400 in recognition of this.

As with other complaints about the Tax Credits, our investigation was subject to delays in the TCO making information available to us. This, of course, added to the worry and distress that Ms A experienced and prolonged matters unnecessarily. The TCO agreed to pay Ms A a further £50 in recognition of this, together with £50 to cover her costs.

TCO case summary 2

Mrs B, a single parent on a low income, made a claim for CTC and WTC in October 2003, requesting that her payments were

made four-weekly. When she received her award notice, her childcare costs were incorrect so she telephoned the Tax Credit Helpline. Her revised award notice was still incorrect and the Inland Revenue commenced making payments weekly, rather than every four weeks as requested.

Mrs B made numerous calls to the Helpline, which resulted in her receiving three further award notices, all of which showed different amounts. Mrs B was obviously confused by this and made further efforts to sort matters out by telephoning the Helpline again. This only resulted in her receiving more award notices which, again, showed differing amounts. In addition, she started to receive payments of WTC with her wages from her employer, in spite of her award notice stating that she would receive payments directly. Mrs B told the Inland Revenue that she was concerned that this would result in her receiving too much WTC in the 2003/2004 tax year.

In addition to an overpayment of approximately £700 that arose from Mrs B receiving payments from her employer as well as to her directly, her award was also subject to a software problem with the Tax Credit computer system. This meant that, in the 2003/2004 tax year, Mrs B received an additional £1400 in error.

The TCO calculated that, in total, Mrs B was overpaid in excess of £2150 in the 2003/04 tax year and commenced the recovery of this amount from her 2004/2005 Tax Credits award. She complained to the TCO, asking for them to clarify their calculations. They acknowledged that her claim was handled badly and paid her £75 in recognition of this. They did not, however, provide her with the explanation that she had requested.

We upheld this complaint.

We asked the TCO to provide us with a report about Mrs B's complaint, together with her files. Although this information was requested in March 2004, we did not receive the papers until October 2004 in spite of repeated requests. These unacceptable delays were the result of the very high volume of complaints that the TCO were experiencing at this time.

In their report, the TCO acknowledged that over £1400 had been overpaid to Mrs B as a result of computer error. They said that they were not in a position to decide how much, if any, of this amount should be remitted due to continued problems with the computer system.

Under the terms of COP 26, there are some circumstances in which the TCO can decide not to recover all, or part, of an overpayment from a customer. Typically, this will involve cases where the customer was paid too much because of a mistake by the Inland Revenue and it was reasonable for them to have believed that their Tax Credits award was correct.

In this case, Mrs B received multiple award notices throughout the spring of 2003, the majority of which contained conflicting information. We saw that she made numerous efforts to clarify matters without success. On this basis, we concluded that it would have been impossible for Mrs B to know her correct entitlement to WTC or CTC and, therefore, she could not have realised that she had been overpaid. As the software error that resulted in her being overpaid was clearly not her own fault, we asked the TCO to give up the £1400 overpayment resulting from this error.

The TCO agreed to give up this amount and also identified that a further £100, in

Tax Credit Office case summaries

respect of the duplicate payments received from her employer, was recovered in error. We concluded, however, that the remainder of the money overpaid as a result of the duplicate payments (approximately £600) should be recovered. This was because Mrs B was aware at the time that this amount was overpaid and it was not, therefore, reasonable for her to believe that this was correct.

In recognition of their delays, the TCO offered to pay Mrs B £50. They also offered a further £75 in recognition of their poor handling of her complaint. We asked the TCO to increase their offer of £75 to £150 as we considered that this was a more appropriate amount given the obvious worry and distress that she experienced.

TCO case summary 3

Mr C & Ms D completed their claim for CTC and WTC in October 2002. The claim form asked for details of their income in the 2001/2002 tax year, which they duly supplied.

Ms D received an award notice from the Inland Revenue shortly after the start of the 2003/2004 tax year, the first in which the 'new' Tax Credits were payable. It showed the couple's joint annual income, the number of qualifying children and their annual CTC award.

Ms D wrote to the TCO because she believed that the award should be higher because she had reduced her working hours. She gave details of her expected salary for the 2003/2004 tax year and explained that Mr C's income was unchanged.

When the TCO processed the couple's change in circumstances, they correctly entered Ms D's revised income but failed to enter Mr C's income details at all. They

issued a revised award notice to Ms D, showing the same information regarding the qualifying children together with details of her new income. Mr C's income, however, was not shown on the award, which had increased by over 1000% because it was based solely on Ms D's earnings.

Ms D said that she did not realise that the award was wrong until she received a copy of 'Tax Credit Update' in the post, which contained a 'ready-reckoner' to help claimants to calculate their correct entitlement. Ms D alerted the TCO to her overpayment in November 2003, by which time she had already received too much Tax Credit.

In this case, the TCO said that it was not reasonable for Ms D to have believed that the award was correct, as it had not shown Mr C's income details. They did, however, acknowledge that Mr C and Ms D suffered worry and distress as a result of their failure to include Mr C's earnings in their calculation of the couple's award. They agreed to make a payment of £150, in accordance with the Inland Revenue's Code of Practice 1 (COP1) *Putting things right*. They also acknowledged that they failed to handle the couple's complaints properly and paid them a further £75. The couple remained dissatisfied and contacted this office.

We did not uphold this complaint.

Ms D told us that she believed that the TCO should waive the overpayment of Tax Credits. While we accepted that the TCO's omission of Mr C's earnings from their calculation was a regrettable oversight, with serious repercussions for the couple, we agreed with the TCO's view that it was not reasonable for Ms D to have believed that her award was correct. We also felt that the compensation already paid by the TCO in this regard was, in the circumstances, reasonable.

We concluded that it was not unreasonable for the TCO to expect Mr C and Ms D to have checked the award notice and realise that their total income was wrong. The fact that the award had increased by such a significant amount and that it now showed that Ms D was also entitled to WTC should also have alerted her to the problem.

Unfortunately, our investigation was delayed by the TCO's failure to send us their report and files. They offered to pay Ms D £30 to recognise this delay, which, again, we considered to be reasonable.

Following the conclusion of our investigation, Ms D wrote to us again. She said that, after she had received the second, incorrect, award notice, she had telephoned the Tax Credit Helpline. Ms D claimed that an adviser told her that the award was correct.

In many instances, the Inland Revenue's Contact Centres record the telephone calls that they receive. In this case, they were unable to trace the call and, faced with a version of events where there was no independent evidence to support the claim, we were unable to alter our decision.

TCO case summary 4

Mr and Mrs E made a claim for Tax Credits in November 2002, receiving a decision notice in May 2003. When the payments commenced, they were paid too much because Mr E had omitted his income from their original claim. He quickly notified the Tax Credit Helpline of his mistake but, when they processed his change of circumstances, the computer rejected the disability element of his claim. This meant that Mr and Mrs E were issued with a nil award and did not receive any payment for five months.

When the Inland Revenue finally recommenced payments, they were unable to make these into Mr and Mrs E's elected account and had to send them giro payments instead. That situation lasted for ten months, during which time Mr E, who is disabled, incurred unnecessary direct costs when he cashed the giros.

In February 2004, Mrs E gave birth to twins, who were born severely disabled. When the Tax Credit Helpline tried to add the children and their further disability elements to the award, the change of circumstances was rejected. This meant that Mr and Mrs E did not receive the money that they were entitled to.

The Inland Revenue continued to issue giro payments, but Mr E was concerned that they were not being paid the correct amount of money. He also believed that he had not received some of the giros that the Inland Revenue claimed they had issued. The TCO accepted that they had not dealt with the family's affairs properly and paid Mr E £70 for worry and distress, £45 for poor complaints handling and £10 for his direct costs. Mr E was dissatisfied and felt that his situation had not been resolved, so he complained to the Adjudicator.

**Tax Credit Office
case summaries**

We upheld this complaint.

We spoke to Mr E and established that, during the period his family was without Tax Credits, they regularly had to borrow £2-300 from their relatives to replace the Tax Credits that they had not received. Mr E's disability meant that he could not walk to his local Post Office to cash the giros. The TCO agreed to reimburse the taxi fares that he incurred as a result of their failure to make payments to his elected account.

The TCO also corrected the problem with Mr and Mrs E's award and paid them the arrears of Tax Credits that they were entitled to receive. Unfortunately, however, the Inland Revenue failed to account for all of the giros sent to Mr and Mrs E. This resulted in Mr and Mrs E being overpaid Tax Credits amounting to £1312.

The TCO accepted that Mr and Mrs E were overpaid because of their delay in allocating those giros to their 2004/05 award. As it was clear that Mr and Mrs E could not have realised that they had not received the correct amount of Tax Credits, the TCO agreed to give up the overpayment under the terms of COP26. They also agreed that the compensation previously offered was insufficient. Mr and Mrs E accepted the additional compensation and direct costs totalling £480, in settlement of their complaint.

TCO case summary 5

Ms F completed a claim for Tax Credits, which she sent to the Inland Revenue in good time. Initially, the name of one of her children was wrongly recorded, which caused some delay in her claim. There was then a technical problem, which prevented Ms F's award from being issued.

Ms F was entitled to CTC and WTC from April 2003, but her award was not issued

until January 2004. She did receive interim payments, many of which she had to collect from her local tax office. When the technical problem was fixed, however, the system did not recognise the payments she had already received, so she was overpaid in excess of £10,000.

When Ms F complained to the TCO, she did not receive a response for over a month. When the TCO did reply, they could not provide an explanation for what went wrong. Ms F eventually wrote to this office and we asked the TCO to respond directly to her. Ms F subsequently received two letters giving conflicting information and not all of the issues that she had raised were addressed. The TCO paid Ms F £100 for the worry and distress caused by the delay in resolving her claim and £10 to cover the costs of telephone calls and letters.

Ms F repaid over £11,000 to the TCO in July 2004, which was about £1,000 more than she needed to repay because she had been given incorrect advice about the size of the overpayment. Further technical problems prevented the system from calculating the final overpayment, some of which was already being recovered from Ms F's 2004/2005 award.

We upheld this complaint.

When we investigated Ms F's complaint, we felt that the payment for worry and distress was too low. Ms F was a single parent on a low income, and she did not receive any payments of Tax Credits until June 2003. She also explained that the later overpayment caused her considerable distress, not least because she was not sure how much she needed to budget for her repayments. Ms F had also incurred costs in travelling by bus to collect her interim payments from her local tax office. We also found that Ms F's complaint had been handled very poorly, and that

additional compensation should be considered to reflect this.

We asked the TCO to repay the amount that Ms F had over-repaid. They eventually agreed to issue a manual payment to Ms F. This was not ideal, because it could lead to some further adjustments when the system is finally able to calculate the overpayment. A possible consequence of this would be a further overpayment (which Ms F agreed she would return in the event that it happened). The TCO said they would repay money being recovered from her current award as soon as the technical problems were resolved and that they would check Ms F's case on a daily basis until matters were finally resolved. They also agreed to make a further payment of £50 for worry and distress, £7.50 to reimburse the cost of bus fares and a total of £100 for poor complaint handling.

We were concerned about leaving some issues unresolved in this case. The TCO had explained, however, that they were unable to say how long it would be before the technical problems could be resolved, and it seemed, in the circumstances, that we had progressed matters as far as we could.

Inland Revenue Contact Centres and Helpline case summaries

Inland Revenue Contact Centres (IRCC) and Helplines were the first point of contact for calls made to the Inland Revenue. Their aim was to provide a professional service to all callers, with staff able to provide help and assistance on many lines of business, including Taxes, National Insurance, Child Benefit and Tax Credit matters.

IRCCs recorded many of their calls for training and quality control purposes, with some calls being retrieved by us during complaint investigation. A recording will often enable us to resolve such complaints conclusively.

The Tax Credit Helpline regularly experienced a large volume of callers, some of whom found it difficult to access the system at peak times. We have investigated several complaints about the advice provided by the Tax Credit Helpline, as illustrated in the following case summary.

Tax Credit Helpline case summary

Mr and Mrs G started a business in June 2003. At that time, both were in paid employment with Mr G working full-time and Mrs G part-time. Their intention was for Mr G eventually to give up his job to run their new business full-time, while Mrs G would continue to work part-time.

In August 2003, prior to her husband giving notice to his employer, Mrs G rang the Tax Credit Helpline for advice. She explained that her husband was giving up work in September and that they needed to know their Tax Credit entitlement in order to budget their household income effectively. Mrs G was advised that she and her husband would get estimated Tax Credits of nearly £6,200,

**Tax Credit Helpline
case summary**

comprising CTC of approximately £290 per month and WTC of nearly £230 per month.

Unfortunately, the adviser failed to request details of Mr G's salary up to the time when he intended to cease employment, despite the fact that Mrs G made it clear during the call that her husband was currently working. This meant that the advice about the couple's entitlement to Tax Credits was wrong.

On the basis of the information that his wife received, Mr G gave notice to his employers in September, ceasing work the following month. Mrs G made several calls to the Tax Credit Helpline in the weeks before her husband left his job to inform them of the change in his circumstances. She was initially told that she should notify the Helpline a week before Mr G gave up work. She was subsequently advised that she needed to notify the change after he gave up work and that their Tax Credits would be re-calculated and a new award issued.

Mrs G duly rang the Helpline in early November 2003. During the call, the adviser told Mrs G that the level of her husband's earnings up to the point where he left his job meant that they would not be entitled to the amount of Tax Credits that they were previously told they would receive. Mrs G subsequently complained to the Inland Revenue about the misleading advice she received during her initial conversations with an adviser. She requested payment of the Tax Credits that she and her husband had been told they would receive at the outset.

The Inland Revenue apologised to Mr and Mrs G for the misleading advice that they received and paid them £250 for the resulting worry and distress. They said that they could not, however, pay them the amount of Tax

Credit that they were initially told was correct. Mrs G complained about this decision to the Adjudicator.

We upheld this complaint.

We reviewed all of the correspondence in connection with the case, including recordings of Mrs G's telephone calls to the Helpline.

We found that the first call, during which Mrs G was given the incorrect advice, was not handled well. The adviser in question was very pleasant but he failed to obtain all of the relevant details from Mrs G, basing the estimated entitlement on incomplete information.

We found that there were inconsistencies in the advice that Mrs G received from the various advisers that she spoke to. For example, on one occasion, she was asked to call back with further information that she had already submitted.

When Mrs G was told about the reduction in Tax Credits entitlement during her telephone call to the Helpline in early November 2003, she was, understandably, very upset. Unfortunately, the adviser that she spoke to did not deal with her concerns in a helpful manner. She failed to provide Mrs G with information about the appropriate complaints procedure and repeatedly stressed that, because she had not provided the misleading advice herself, all that Mrs G could do was to complain in writing. When Mrs G asked to speak to the adviser's supervisor, the adviser told her that her supervisor would only repeat what she had already been told.

We considered that the Inland Revenue had failed to address the issue of direct costs arising from their mistakes. We felt that these costs amounted to the lost income

resulting from Mr G giving up his job in October 2003.

Mr G's decision to give up his full time employment came as a direct result of the wrong advice that his wife received from the Helpline. The decision was clearly taken in expectation of a level of income based on an incorrect estimation of the award of Tax Credits.

We asked the Inland Revenue to compensate Mr G for the difference between the Tax Credits that he and his wife had expected to receive and the amount that they actually received between the point where he stopped working and the end of the tax year. We also asked them to reimburse interest that the G's incurred on an overdraft during this period.

Additionally, we asked the Inland Revenue to make further payments in respect of Mr and Mrs G's correspondence costs, a payment for poor complaint handling and a small increase in the consolatory payment.

Inland Revenue Contact Centres accepted our findings and agreed to pay Mr and Mrs G the compensation and costs that we identified.

Child Benefit Office case summaries

This year, we have continued to receive a relatively small number of complaints about the Child Benefit Office (CBO) in comparison with other parts of the Inland Revenue.

In our last annual report, we noted that this was probably due to the mostly non-contentious work carried out by the CBO. We did, however, highlight the issue of

'shared care' where, typically, parents have separated or divorced but share responsibility for the care of a child, as being a potential area for complaints. This is because of the nature of Child Benefit payments, which cannot be split between estranged parents who share child-care responsibilities. In such cases, the CBO must make a decision as to which parent will receive the Child Benefit.

The following case summary illustrates the sorts of issues arising from such complaints.

CBO case summary 1

Following the break up of their marriage, Mr and Mrs H both continued to live separate lives in the former matrimonial home, with both parents contributing to the support and care of their two children.

Mrs H and the children subsequently moved out of the house. The children continued to stay overnight with Mr H at weekends. They also spent some time with their father during the week, before and after school.

Although the children slept at their mother's new home for five nights in the week, Mr H considered that he was entitled to Child Benefit and made a claim.

Both parents satisfied the conditions for entitlement to Child Benefit and the rules concerning priority of entitlement could not determine which parent had the greater claim. As Mr and Mrs H could not reach agreement as to which parent should receive the Child Benefit, it fell to the CBO to make a decision one way or the other.

The CBO decided that, based on the evidence provided by the parents, which included a Shared Care Agreement, they

CBO case summaries

should each receive Child Benefit for one of their children during the period where they continued to share the matrimonial home, albeit living separate lives. They decided that Mrs H should receive the Child Benefit for both children from the date that they moved out.

Mr H wanted to appeal against the CBO's decision but, as the decision was discretionary, there was no route of appeal. On that basis, his claim was rejected. This prompted Mr H to make another claim for Child Benefit. As the regular arrangements for care of the children had not changed, the outcome was the same as before.

Mr H complained to the CBO about the way in which his case was handled. They accepted that they had not dealt appropriately with his concerns and paid him £100 in recognition of the worry and distress that he experienced, together with £20 for his costs. They did not, however, conclude that their decision not to pay him Child Benefit was wrong, so Mr H complained to the Adjudicator.

We did not uphold this complaint. When we investigated this complaint, we were hampered by poor record keeping by the CBO. Failure to document adequately the reasons behind their decisions, although the decisions themselves were very clear, made it difficult to identify the CBO's reasoning.

We found that the CBO, when reaching decisions of this nature, place more emphasis on the level of night-time care than they do on daytime care. This was in line both with their own instructions and procedures and the precedent set by a previous Commissioner's Hearing.

As Mrs H carried out the majority of night-time care, we were unable to conclude that the reasoning behind the CBO's decisions and, therefore, the decisions themselves, were unreasonable. While we were concerned by the poor standard of the CBO's record keeping, we were pleased to note that they had acknowledged this and put procedures in place to ensure that the problem would not recur.

During our investigation, we were also concerned by the way the CBO handled Mr H's attempts to appeal against their decisions. As it was not appropriate to appeal against a discretionary decision, we asked the CBO to consider making this clear in their letters and literature. We felt, however, that the compensation paid to Mr H was adequate and did not ask the CBO to make any further payments.

In previous annual reports, we have stressed the importance of the Inland Revenue recognising their responsibilities concerning respect for the privacy of all taxpayers. Taxpayer confidentiality is of paramount importance and the following case summary illustrates how sensitive the work of the CBO is and, equally, how it is essential that they do not make inappropriate disclosures of information.

CBO case summary 2

Mr and Mrs I adopted a young child and made a claim for Child Benefit. When the CBO processed their claim, however, they found that the child's birth parents were also claiming Child Benefit. This prompted the CBO to carry out further enquiries, during which they disclosed Mrs I's name to the birth parents. The birth parents then told Social Services that they knew the name of the person that had adopted their son.

Social Services contacted Mrs I immediately, advising her that the CBO had made an inappropriate disclosure of information to her adopted child's birth parents.

Mrs I was very concerned about the CBO's actions and made a formal complaint. The CBO's response to this was to launch an investigation, the execution of which was wholly inadequate. It concluded with the CBO denying that there had been any inappropriate disclosure of her identity. Mrs I was, understandably, extremely dissatisfied and the CBO agreed to conduct a more thorough investigation. At the end of this investigation, the CBO confirmed that they had disclosed Mrs I's name to both of her adopted child's birth parents. They confirmed, however, that they had not revealed her address, or any other information that might identify her whereabouts.

The CBO apologised to Mrs I and agreed to pay her:

- £500 to recognise the worry and distress caused by their mistakes
- £500 to recognise their failure to deal with such a serious complaint properly from the outset
- £10 to cover her costs.

Mrs I remained concerned, however, that the CBO would not provide her with a 'blanket guarantee' that they would reimburse any further costs that she might experience as a result of their error. For example, Mrs I was concerned that, if her son's birth mother managed to find where they lived, it might be necessary to pay a solicitor to obtain an injunction. She said that she was worried that, at potentially short notice, she might incur considerable legal fees.

While the CBO were not prepared to make any such general assurance to Mrs I, they said that they would consider any future costs arising from their mistakes against the provisions of the Inland Revenue's Code of Practice 1 - *Putting things right* (COP1). If the conditions of COP1 were satisfied, they said that they would make appropriate payments.

Mrs I felt, however, that as the CBO had already paid her compensation amounting to over £1000, they would seek to deny any further liability if she were to incur future costs. She was concerned that, with the passage of time, the CBO might seek to distance themselves from any additional responsibility.

We did not uphold this complaint.

Although it is absolutely clear that the CBO made a very serious mistake when they disclosed Mrs I's name to her adopted child's birth parents, we felt that they had acted in accordance with the provisions of COP1 when considering appropriate measures to put things right. The amount of compensation paid was, rightly, at the top end of the range that is allowable under the terms of COP1.

We carefully explained to Mrs I that, if she did incur any further expenses as a result of the Inland Revenue's mistakes, she could make a claim for these to be reimbursed. The CBO would then consider her claim under the terms of COP1, which they had applied fairly when considering appropriate compensation earlier in their handling of her complaint.

We sent a letter to Mrs I, which confirmed the position. She said that she accepted the content of the letter and felt that this had gone some way to reassuring her for the future.

Receivables Management Service case summaries

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 played an important role in encouraging taxpayers to comply with their statutory obligations. In addition, and several years before announcement of the creation of HMRC, RMS took a key role in contributing to joined up debt management services across Government, providing specialist insolvency services for Customs and Excise.

In some circumstances, the Inland Revenue can exercise discretion to offer taxpayers in financial difficulties additional time to pay. Such a concession allows taxpayers to spread the payment of their arrears over an agreed period of time. We often receive complaints about the way in which the Inland Revenue handle such arrangements, as illustrated in the following case summaries.

RMS case summary 1

Mr J repeatedly failed to submit his tax returns to the Inland Revenue on time. In March 1999, his self-assessment tax returns covering the tax years from 1996/1997 - 1998/1999 were still outstanding and, by May 2000, his bill for outstanding tax, interest and penalties amounted to more than £113,000. In addition, he did not submit his completed tax returns covering the years from 1992/1993 to 1996/1997 inclusive until July 2000. Although Mr J did make some

payments to the Inland Revenue, these were insufficient in comparison to the scale of his debt.

In February 2001, the Inland Revenue applied for a County Court Judgement against Mr J but subsequently agreed not to pursue this until he had submitted his 1999/2000 self-assessment tax return.

In May 2001, the Inland Revenue agreed an instalment arrangement with Mr J, which comprised monthly payments of £300 with additional payments every three months, together with a promise of £10,000 from an insurance policy when this matured. It was agreed that this arrangement would be reviewed in October 2001.

In the event, however, the arrangement was not reviewed until December 2001, when the Inland Revenue contacted Mr J because he had failed to make the additional three-monthly payments specified in the arrangement. The Inland Revenue subsequently agreed to accept payments from Mr J of £500 a month for a further three months, provided that he submitted his 2000/2001 tax return by 31 January 2002 and that he pay any tax due for that year on time. Although Mr J did pay the monthly instalments on time, he failed to submit his self-assessment tax return for 2000/2001 by the specified date and the Inland Revenue cancelled the arrangement in May 2002.

By August 2002, the amount outstanding was still over £53,000. Mr J subsequently complained that the Inland Revenue had cancelled his instalment arrangement, even though he felt that he had made payments as agreed. He also complained that the Inland Revenue could not demonstrate how they had allocated the amounts that he had paid against his arrears.

We partially upheld this complaint.

During our investigation, we saw that the Inland Revenue had given Mr J ample opportunities to pay the tax due. It seemed that the main reason for him bringing his complaint to the Adjudicator was to prolong matters further and, in effect, 'buy more time'.

We did conclude, however, that the Inland Revenue, by their own admission, did not handle Mr J's complaints well following the cancellation of the instalment arrangement. It was clear that he remained confused by their explanations and that this had led to a certain amount of worry and distress on his behalf.

The Inland Revenue offered to pay Mr W £150 in recognition of the distress that was caused by their poor handling of his complaint. We concluded that, in the circumstances, this was reasonable.

RMS case summary 2

Mr K received a substantial bill for unpaid tax following an Inland Revenue Enquiry. His agent made a payment on account and asked the Inland Revenue to consider a time to pay arrangement.

The Inland Revenue acknowledged receipt of the agent's request and said that his time to pay proposals would be referred to Mr K's local Collector of Taxes. In the event, however, the agent's letter was forwarded to the wrong office, which meant that the local Collector of Taxes remained unaware of the agent's proposals.

In the meantime, Mr K went abroad. While he was out of the country, his local Collector of Taxes visited his business premises on two separate occasions, leaving notice of his intention to levy distraint on Mr K's goods.

On his return from abroad, Mr K was concerned to hear of the Collector's intentions, especially as he had shown his willingness to enter into a time to pay arrangement that had been ignored.

Further mistakes occurred and Mr K's agent suggested that the Inland Revenue should remit some of the interest on his client's arrears in recognition of these mistakes.

The Inland Revenue failed to respond to the agent and, when a different time to pay arrangement was finally agreed, the Inland Revenue failed to respond to the agent's requests for details of amounts outstanding. The agent subsequently complained to this office about the way in which his client's affairs were handled.

We did not uphold this complaint.

In their report to this office, the Inland Revenue fully accepted that they had made a number of mistakes in their handling of Mr K's affairs. We saw, however, that they had apologised for these mistakes before the agent contacted us. A sizeable amount of interest was remitted in recognition both of the professional fees that Mr K incurred and the worry and distress that he suffered as a direct result of the Inland Revenue's mistakes.

We concluded that the compensation offered by the Inland Revenue in the form of interest remitted was reasonable and in keeping with the terms of their Code of Practice concerning mistakes. We did not consider that any further compensation was appropriate and, following lengthy discussions with Mr K's agent, we were able to reach a mediated settlement of the complaint.

National Insurance Contributions Office case summaries

In the six years following the merger of the Contributions Agency with the Inland Revenue, which led to the formation of the National Insurance Contributions Office (the Office), we have seen considerable improvement in their handling of National Insurance (NI) based complaints.

In our last report, we commended the Office for the reduction in complaints about their service that reached the Adjudicator. We also noted a reduction in the percentage of those complaints that we did investigate that were subsequently upheld. In the 2003/2004 year, we completed 27 investigations, 37% of which were upheld.

This downward trend has continued in the 2004/2005 year. Of the 23 investigations that we completed, 26% were partially upheld and none were wholly/substantially upheld. This reflects the Office's careful and considered approach to the handling of complaints and they are again to be commended for the way in which they prevent complaints from escalating.

Deficiency Notices

In our last annual report, we noted the considerable publicity surrounding a policy decision to suspend the issue of "deficiency notices" - reminders that insufficient NI contributions have been paid for a particular year - for the tax-years 1996/1997 to 2001/2002 inclusive. This decision was taken following initial problems with the new NIRS2 computer system.

The Office subsequently carried out a bulk exercise in the 2003/2004 tax year, issuing deficiency notices retrospectively to cover the period of suspension. From 2004/2005, the Office resumed their practice of issuing

notices annually, starting with the 2002/2003 year.

Shortfalls of NI contributions identified on a deficiency notice can be remedied by the payment of voluntary Class 3 NI contributions. Usually, these must be paid within six years of the end of the tax year that is deficient in order for them to make the year a 'qualifying year' for Retirement Pension purposes.

For the purposes of the bulk exercise, however, the Office extended the time limits for payment in recognition of their decision to suspend the issue of deficiency notices between 1996/1997 and 2001/2002.

We investigated a number of complaints this year that concerned matters arising from the late issue of deficiency notices.

Office case summary 1

Mr L received a deficiency notice from the Office for the tax year to 5 April 2003, which indicated that he had paid insufficient NI contributions in that year for it to be classed as a qualifying year for Retirement Pension purposes. The notice invited him to pay a number of voluntary Class 3 NI contributions in order to make the year qualify.

Mr L had, however, previously received a pension forecast, which stated that he already had 39 qualifying years recorded on his NI account. In addition to these, he would be entitled to automatic credits between the ages of 60 and 65. This would result in him accumulating 44 qualifying years in total, which would entitle him to receive the maximum rate of state Retirement Pension payable, irrespective of the deficiencies in the 2002/2003 tax year.

On that basis, Mr L did not need to pay any voluntary Class 3 NI contributions because these could not enhance his pension entitlement. This prompted him to complain about the issue of deficiency notices in similar cases to his own. He considered that the receipt of such notices could result in people paying voluntary contributions when there was no need for them to do so.

We did not uphold this complaint. In their report to us, the Office accepted that, because Mr L had complained to them previously after he received a deficiency notice for the tax years 1996/1997 to 1998/1999, they should have noted his records to prevent the issue of further notices. They said that they had now noted Mr L's records to that effect. They asked us, however, to explain to Mr L that if, for any reason, he did not receive automatic credits between the ages of 60 - 65, his pension and other benefits could be affected.

We considered that, more generally, the Office had acted in accordance with their own instructions and that deficiency notices play a valuable role in alerting people to deficiencies on their NI contributions account. We do not consider that deficiency notices are demands for payment and this is explained clearly on the notice. By their very nature, Class 3 NI contributions are paid voluntarily and their payment cannot, therefore, be enforced by the Inland Revenue.

Office case summary 2

Mrs M received a deficiency notice as a result of the bulk exercise undertaken by the Office in the 2003/2004 tax year. She subsequently requested a pension forecast and found that, in addition to the 1996/1997 tax year being deficient, she had paid insufficient NI contributions for the

1995/1996 tax year to qualify for Retirement Pension purposes. The 1995/1996 year was not affected by the suspension of deficiency notices, which were issued as normal 18 months after the end of the tax year.

Mrs M paid voluntary Class 3 NI contributions for the 1996/1997 tax year under the extended terms offered by the Office. Ordinarily, these contributions should have been paid by the end of the 2002/2003 tax year, six years after the end of the tax year in which they were originally due. The six-year time limit was, however, extended to 5 April 2009 in recognition of the suspension of deficiency notices between the 1996/1997 and 2001/2002 tax years.

In addition to the voluntary contributions that Mrs M paid for the 1996/1997 tax year, she also wanted to pay sufficient Class 3 NI contributions to make the 1995/1996 tax year a qualifying year. The time limit for paying voluntary Class 3 NI contributions for that year was 5 April 2002.

The Office told Mrs M that they could not accept a payment for the 1995/1996 tax year because it was outside the relevant time limit, which could not be extended because deficiency notices were issued correctly that year. The Office confirmed that their records showed that a deficiency notice had been issued to Mrs M at the appropriate time.

Mrs M said that she had not received the deficiency notice for 1995/1996. It soon became apparent that the Office had sent her notice to a previous address. She considered that it was unfair that she could not pay the necessary Class 3 contributions, particularly as she had made numerous tax returns showing her current address. She was also unhappy with the way in which the Office handled her enquiries.

NICO case summaries

We partially upheld this complaint.

Mrs M told us that she had not made any enquiries about her National Insurance record, her pension position, or the payment of voluntary Class 3 NI contributions before June 2003. She believed that it was unfair of the Inland Revenue to expect people to be aware of all the issues concerning the safeguarding of rights to a Retirement Pension.

We explained to Mrs M that there are very limited circumstances where the Office can agree to extend the time limits for payment of Class 3 NI contributions. The non-receipt of a deficiency notice was not sufficient grounds for asking the Office to reconsider their decision in this regard.

In our view, the Office had considered properly all the facts of the case and we saw that they had issued the 1995/1996 deficiency notice to the address that they held for Mrs M at the time. When the deficiency notice was issued, the Office was an executive agency of the Department of Social Security (DSS) and not part of the Inland Revenue. There was no mechanism in place for exchanging information, such as a taxpayer's address, between the two departments. Although Mrs M said that she had provided her address details on numerous tax returns, this had no bearing on the Office's handling of her affairs. The responsibility for ensuring that personal details are correct and that NI contributions are in order rests squarely with the individual.

We did, however, find that the Office could have handled some of Mrs M's enquiries better. They had sent her confusing information and failed to explain, at an early stage, about the bulk exercise in 2003/2004 and the strict time limits for paying voluntary Class 3 NI contributions. Some

correspondence sent to Mrs M was poor, unsigned and with her name spelled incorrectly, which clearly added to her irritation.

In their report to us, the Office acknowledged this, accepting that they should have handled matters better. They offered compensation of £10 for Mrs M's incidental expenses and £50 to recognise the poor handling of her complaint, which we considered reasonable.

Inland Revenue Centre for Non Residents case summaries

In recent years, the Inland Revenue brought their various International Services functions together under one umbrella, called the Centre for Non Residents (CNR).

Among other things, CNR are responsible for the maintenance and safeguard of accurate NI accounts for the benefit of overseas customers. They provide advice and documentation for individuals, employers and agents about liability for the payment of UK National Insurance contributions whilst abroad. We have noticed a significant trend this year in terms of the number of NI complaints that we received about the CNR.

Due to the nature of the CNR complaints that we receive concerning NI matters, we feel that it is appropriate to include a CNR case summary in this section of our report. The following case summary is typical of the complaints we have investigated about the CNR in the past 12 months.

CNR case summary

Mr N is British and lives abroad. In order to safeguard his UK Retirement Pension, he has been paying Class 3 NI contributions since 1997. As an employed earner, however,

Mr N has always had the choice to elect to pay either:

- voluntary Class 2 NI contributions (which the self-employed are legally obliged to pay in the UK), or
- voluntary Class 3 NI contributions (which may be paid by the non-employed in the UK to safeguard their pension rights in the absence of contributions paid through employment).

Up until April 2000, Class 2 NI contributions were slightly more expensive than their Class 3 equivalents. From April 2000 onwards, however, the cost of Class 2 NI contributions was significantly reduced.

Mr N only realised the change in rates in November 2003, when he requested a Retirement Pension forecast. The information supplied with the forecast alerted him to the change in rates. He subsequently contacted the CNR, requesting that he be allowed to pay Class 2 NI contributions instead of Class 3. The CNR agreed to this change but would not allow Mr N to convert the Class 3 NI contributions that he had paid from April 2000 to Class 2 and refund the excess paid.

We did not uphold this complaint.
We agreed with the CNR's view that there were no grounds for providing a refund of the Class 3 NI contributions already paid by Mr N since April 2000.

Where a NI contributor has a choice concerning which class of contribution to pay, it follows that it is their responsibility to choose the appropriate class based on their individual needs and circumstances. There is, of course, no legal liability for an individual to pay 'voluntary' classes of NI and no enforcement to pay. It is simply a matter of individual choice. The

responsibility of the Inland Revenue in such circumstances is rightly limited to ensuring that contributors are made aware of changes to the rate that they are paying.

In this case, the Office collected Mr N's contributions in keeping with his original choice. They could not refund the difference between the Class 3 NI contributions that he had paid and the Class 2 contributions that he subsequently began paying. This is because voluntary contributions can only be refunded in quite limited circumstances. An example of this could be where an individual has paid Class 3 NI contributions when they have already paid, or been credited with, sufficient contributions for the year to qualify for pension purposes. They cannot be refunded in circumstances such as this, where the underlying issue concerns cost alone.

There was considerable media coverage at the time the Class 2 rate was lowered and the Inland Revenue makes the rates of NI available through a variety of sources, including their website. On that basis, we did not conclude that the actions of the CNR were unreasonable.

We have received a number of similar complaints about this issue and, to date, the Adjudicator has upheld none of these. While we do have some sympathy with complainants for the irritation and annoyance that they have suffered, we consider that there has always been sufficient information in the public domain for people to make an informed choice about which NI contribution to pay in these circumstances.

Inland Revenue Local Services

The local organisation of the Inland Revenue underwent significant change in recent years, prior to the announcement of HMRC. For example, before the transition to HMRC, there were seven geographical Inland Revenue regions covering England, Wales, Scotland and Northern Ireland, whereas previously there had been ten. Within the seven regions there were over 70 Areas covering a number of local offices, which were managed collectively by Area Directors.

As with the National Services aspect of the Inland Revenue's work, it is still too early in the life of HMRC to know with any certainty how the work of these local services will fit into the new business structure.

The following case studies illustrate two particular aspects of the Inland Revenue's work that often raise contentious issues, namely:

- the application, or not, of Extra Statutory Concession A19 (ESC A19) and
- the manner in which Investigations and Enquiries are handled.

ESC A19 case summaries

Second only in number to complaints about Tax Credits in 2004/2005 were the complaints that we received about the Inland Revenue's handling of people's tax codes.

We see many cases involving unexpected tax liabilities resulting from problems with tax codes. Sometimes these problems stem

from the Inland Revenue's failure to amend tax codes on receipt of information or from employers using an incorrect tax code. In some cases, however, the unexpected liability is the result of negligence on the taxpayer's behalf.

Taxpayers have a fundamental duty to ensure that their tax affairs are up to date and in order. In many of the cases that we investigate about tax codes, the complainant has asked the Inland Revenue to give up an unexpected tax liability under the terms of ESC A19.

Under the provisions of ESC A19, the Inland Revenue can give up arrears of tax where they have failed to make proper and timely use of information that they have received. There are, however, strict conditions that must be met before the concession can be applied. Usually, the concession will only apply where a taxpayer:

- was notified of their tax 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.

The concession can *only* apply, however, where the taxpayer reasonably 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.

A trend that we have identified over the past year concerns an increase in the number of complaints from taxpayers who receive car and fuel benefits from their employer. We have dealt with a significant number of cases where these benefits have not been included in an individual's tax code, resulting in underpayments of tax. The following case summaries illustrate the importance of checking tax codes to ensure that they are correct.

ESC A19 case summary 1

Mrs O's employer provided her with a company car and fuel benefit. Over a period of several years, her employer provided the Inland Revenue with all her correct details at the right time but they repeatedly failed to update their records correctly. This meant that her tax code included the correct figure for car benefit but no adjustment at all for fuel benefit.

Once the Inland Revenue realised their mistake, Mrs O was left with a large and unexpected tax demand. She claimed that she had thought her tax code was correct because she believed that the car benefit element also included fuel benefit. However, a simple calculation would have shown that the figure quoted on her notice of coding was much lower than the amounts shown on her P11D forms, which she received annually from her employer.

We did not uphold this complaint.

We agreed with the Inland Revenue's view that Mrs O did not meet the conditions of ESC A19 on the grounds of 'reasonable belief'. Over the period involved, Mrs O had received at least ten items of correspondence from the Inland Revenue, each of which gave details of the benefits included in her tax code. All of these items clearly stated that the onus is on the taxpayer to check that the information held is correct. We felt that the Inland Revenue's mistake would have been obvious, if Mrs O had carried out this simple check.

Although we did not recommend the Inland Revenue to give up Mrs O's tax arrears under ESC A19, they clearly made mistakes in their handling of her tax affairs. We considered that the apologies made to Mrs O for their errors and a payment of £125 as compensation were, in the circumstances, reasonable.

ESC A19 case summary 2

Mr P's employer provided him with a company car, towards which he made a personal contribution for private usage. Under normal circumstances, this should reduce the size of the benefit for tax purposes. In this case, however, Mr P's employer operated a scheme whereby the personal contribution was deducted from

ESC A19
case summaries

gross salary. It was not, therefore, subject to tax via PAYE and could not count as a personal contribution for tax purposes.

In June 2001, Mr P told the Inland Revenue that he was getting the car and, in spite of his employer's literature and instructions to the contrary, that he was making a personal contribution. Neither party raised the question of whether the contribution was deducted from Mr P's net, or his gross salary.

The Inland Revenue adjusted Mr P's PAYE code, reducing the benefit by his personal contribution for 2001/2002. This led to an underpayment of tax because Mr P twice received tax relief on his contributions:

- once when his employer deducted them from his gross pay, and
- once when the Inland Revenue deducted them from his car benefit.

In May 2002, the Inland Revenue received Mr P's 2001/2002 P11D form from his employer, which correctly showed no personal contribution towards the car. This was the first time that the Inland Revenue received information showing that more tax was due. They processed the P11D in September 2002 and, in January 2003, automatically issued a notice of coding to Mr P, which showed the same (incorrect) code.

The Inland Revenue finally notified Mr P of the underpayment in November 2003, some 18 months after they received the information showing that more tax was due.

Under the terms of ESC A19, the Inland Revenue must notify an individual of an underpayment within 12 months of the end of the tax year following the year in which it came to light. If they fail to do so, the amount may be given up.

In this case, the underpayment first came to light in May 2002, which fell in the 2002/2003 tax year. The Inland Revenue notified Mr P of the underpayment in November 2003, which fell in the following 2003/2004 tax year. As the Inland Revenue had until April 2004 to notify Mr P within the time limit specified by ESC A19, they said that they could not waive the underpayment. They did, however, acknowledge that their mistakes had caused Mr P worry and distress and made a payment of £100 in recognition of this.

We partially upheld this complaint.

We thought that, when the Inland Revenue processed Mr P's P11D for the 2001/2002 tax year, they should have amended his tax code for the 2002/03 tax year. This would have reduced the size of the underpayment.

Applying the terms of ESC A19, we concluded that this was the Inland Revenue's first failing to make proper use of the information they had received on the P11D. Under the terms of the concession, the Inland Revenue should consider waiving an underpayment where they have failed more than once to act on information received, irrespective of whether the time limits for notifying the underpayment are met.

We took the view that there was a second failure to act on information when the Inland Revenue failed to amend Mr P's 2002/2003 tax code for the remainder of the year in January 2003, at the same time as they issued his 2003/2004 PAYE code. This meant that they had failed more than once to make proper use of the facts at their disposal, which satisfied this aspect of ESC A19.

In order for the terms of ESC A19 to be applied, however, Mr P still had to satisfy the 'reasonable belief' test. During our

investigation, we noted that the Inland Revenue had already written to Mr P in February 2004, stating that he might reasonably have believed that his affairs were in order. By the time we came to investigate the complaint, however, the Inland Revenue had changed their opinion. We felt that, in the circumstances, the Inland Revenue should give Mr P the benefit of the doubt in this regard.

The Adjudicator recommended that the Inland Revenue should waive the underpayment for the 2002/2003 tax year from September 2002 (when they processed Mr P's P11D) and for the entire 2003/2004 tax year. Mr P had requested that the underpayment for the entire 2002/2003 tax year be waived, but we did not feel that this would be appropriate under the terms of ESC A19.

Mr P had also complained that the Inland Revenue's guidance was misleading, as it did not make any distinction between personal contributions from a net or gross salary. The Inland Revenue had already agreed to review their guidance before we took the case on for investigation and we agreed that this was the right thing for them to do.

Experience has shown us that problems with notices of coding can be especially complicated where taxpayers have more than one source of income. The following case summary concerns a taxpayer who received an occupational pension, a retirement pension and earnings from part-time employment. In cases such as this, a separate code number should normally be issued in respect of each source of income, a fact that many taxpayers do not realise.

ESC A19 case summary 3

Miss Q retired early from work due to ill health and began to receive an occupational pension. She was subsequently able to resume work on a part time basis. She advised the Inland Revenue of her income and that she expected to draw her state retirement pension the following year, when she reached the age of 60.

Miss Q's income from her employer's pension and part-time work was taxed correctly but the Inland Revenue failed to adjust Miss Q's tax code when she began to receive her retirement pension. The situation was not rectified and her arrears built up over five years.

During this time, Miss Q did not receive any tax codes and she continued to believe that all of her income was being taxed through PAYE. When she was finally advised that considerable arrears had accrued, Miss Q was, understandably, very upset. She asked the Inland Revenue to give up her tax arrears under ESC A19.

The Inland Revenue accepted that they had received information from the Department for Work and Pensions (DWP) about Miss Q's state retirement pension and that they had failed more than once to act upon this information. They did not, however, accept that Miss Q could have reasonably believed that her tax affairs were in order. They said that she should have expected to pay more tax when her income increased. This upset Miss Q even more, as she believed that the Inland Revenue were questioning her integrity.

The Inland Revenue offered to collect the arrears, which amounted to approximately £5,000, by restrictions to her tax code over 5 years. They also offered to pay Miss Q £100 in recognition of the worry and distress

ESC A19 case summaries

that she suffered because of their mistake. Miss Q was not satisfied with the Inland Revenue's offer and she asked the Adjudicator to consider her case.

We upheld this complaint.

We took the view that Miss Q's tax affairs were not entirely straightforward. We considered that her age and ill health meant that she was vulnerable and that the Inland Revenue should take account of this when considering her case. During our conversations with Miss Q, it was apparent that she had genuinely believed that her affairs were in order and the arrears that accrued had caused her considerable worry and distress.

Miss Q did not receive any tax codes throughout the five years when the arrears built up. We felt that, if she had, these might have alerted her to the fact that she was not paying sufficient tax and, on that basis we felt that she satisfied the conditions set out in the 'reasonable belief' test. As the Inland Revenue had already accepted that they failed to make proper and timely use of information from the DWP, we asked them to reconsider their position concerning 'reasonable belief'.

The test for ESC A19 is whether it was reasonable for Miss O to believe her affairs were in order.

The Inland Revenue subsequently agreed to give up the arrears of tax, which totalled nearly £5,000, under the provisions of ESC A19.

Investigations and Enquiries case summaries

Complaints about the way in which the Inland Revenue carried out Enquiry work and investigations accounted for nearly 10% of the cases that we took on for investigation last year.

These areas of work are essential in terms of ensuring that businesses and individuals are complying with their various statutory obligations. At the same time, however, there is a clear requirement to ensure that this work is conducted in a manner that is sensitive to the needs and expectations of the taxpayer.

Due to the nature of this kind of work, we often investigate cases where delays, worry and distress and claims for the reimbursement of costs are all significant features of the complaint. The following case summaries provide examples of the often complex and contentious character of these complaints.

Investigation case summary

The Inland Revenue opened an investigation into Mr R's company. After the investigation was concluded, the agents acting for the company complained to the Inland Revenue about delays, duplicate requests for information and inconsistencies in their approach. They asked the Inland Revenue to reimburse the company's costs and also claimed that Mr R had suffered from stress as a result of the investigation, which had an adverse effect on his health.

The Inland Revenue did not accept that all of the costs incurred by the company were unnecessary. They did, however, accept that their transfer of the investigation between two offices was handled poorly and that there had been some unnecessary duplication of work. They agreed to

reimburse costs of £3,650 in recognition of this.

The Inland Revenue also offered to pay £250 to Mr R for the worry and distress caused by their handling of the investigation and £100 in recognition of their delay in dealing with the subsequent claim for costs. In addition, they said that they would reimburse 50% of the costs of bringing the complaint, given that it was only partly justified.

The insurers who had indemnified Mr R's company against the costs of the Inland Revenue's investigation complained to the Adjudicator about the levels of compensation.

We partially upheld this complaint.

We were concerned that the Inland Revenue overlooked the fact that the costs in question were covered by an insurance policy, although we saw that they had been alerted to this during their investigation. We asked them for a definitive statement of their policy on the payment of costs under Code of Practice 1, where the taxpayer is covered by insurance and their view of its application in this case.

The Inland Revenue told us that they run a voluntary ex-gratia scheme of compensation for the benefit of their statutory customers - i.e. those whose affairs they are legally obliged to handle - not for the benefit of third parties, such as agents or professional advisers.

They said that it is a fundamental principle of their policy that they consider the reimbursement of costs only where their customers, whose affairs they have mishandled, have had to pay them. They said that any costs in this case that were covered by the insurance policy could not,

therefore, be reimbursed under the terms of their Code of Practice 1.

We also approached the office of the Parliamentary Commissioner for Administration (the Ombudsman) for an informal view on whether they would consider it proper to offer redress to an insurer who has had to pay out more because of an Inland Revenue error.

They told us that they thought it unlikely that they would see the insurer as having a valid claim. They said that the relationship was between the taxpayer and the Inland Revenue and if the insurer becomes involved through offering the taxpayer a contract that relieves them of certain costs relating to Inland Revenue investigations, then they are undertaking a commercial transaction with the taxpayer. They said that, if they draw up the contract in such a way that they undertake to meet all costs, irrespective of whether the taxpayer could get them back from the Inland Revenue, then that was a matter for them to sort out between themselves.

We concluded that the Inland Revenue did not act unreasonably by deciding that they would not reimburse the costs covered by insurance. We also considered whether it would be appropriate for them to stand by their original offer. We considered, however, that the situation was analogous to the Inland Revenue's position on misleading advice and we could not see that anybody had acted to their detriment on the strength of their offer. Indeed, the insurers had made it clear that the offer was unacceptable. We did not, therefore, recommend the Inland Revenue to reimburse any of the costs of the investigation, or any of the insurers' costs in bringing their complaint.

Investigation case summary

We did, however, consider that the Inland Revenue should have realised at an earlier stage the full significance of the insurance policy. We concluded that Mr R's company and its agents were effectively misled by the Inland Revenue entertaining the claim for costs and that it was because of the Inland Revenue's encouragement that the agents' costs in bringing the complaint were incurred.

We recommended the Inland Revenue to reimburse these costs, which amounted to £2,000, provided that they were satisfied that these had been incurred by and paid for by Mr R's company. We also recommended that the Inland Revenue should pay the £250 and £100 to Mr R that they had already offered for worry and distress and their delays respectively.

Section 29 Enquiries

In certain circumstances, for example where information came to light suggesting that a tax liability may not have been declared, it was sometimes necessary for the Inland Revenue to make a further assessment after a self assessment had already been submitted and:

- the self assessment had already been enquired into and the Enquiry had been closed, or
- the time limit for enquiring into the self assessment return had expired. Broadly speaking, the time limit is set at 12 months after the date on which the return was submitted. This 12 month period is known as the 'Enquiry window'.

In these circumstances, the Inland Revenue could only take further action under the provisions of Section 29 of the Taxes Management Act (TMA) 1970. This

allows for them to make a 'discovery assessment' for a period outside the Enquiry window, provided that:

- any further tax that is due arises from the fraudulent or negligent conduct of the taxpayer or their agent, or
- the officer carrying out the Enquiry could not have reasonably expected, on the basis of information available to him/her, to be aware of the underassessment when the Enquiry window closed, or a closure notice was issued.

Enquiry case summary

The Inland Revenue's Special Compliance Office (SCO) asked a local Inspector of Taxes to follow up a request for information from the German tax authorities, which indicated a potential loss of revenue due to undeclared foreign income.

This resulted in a Section 29 Enquiry being opened into Mr S's company tax return for the period ending 31 March 1997 and his personal tax return for the year ending 5 April 1997. At the end of the Enquiry, the Inspector raised estimated assessments. Mr S subsequently launched an appeal against these assessments.

The Inland Revenue's Enquiry encountered difficulties from the outset. To begin with, they were unable to trace Mr S's self assessment tax return for the year under Enquiry. This meant that they could not challenge a claim by Mr S that he had, in a letter accompanying his return, identified the source of his German income.

The Inland Revenue could not verify this because they were unable to locate the tax return, or the accompanying letter. This meant that they had to reduce the

estimated assessments to nil and the Enquiry concluded with no additions.

Mr S's agent subsequently complained about the way in which the Enquiry was handled. He claimed that the Inland Revenue had raised the Section 29 assessments on his client erroneously. He asked them to reimburse Mr S with the direct costs, amounting to over £10,000, that he incurred as a result of the Inland Revenue's Enquiry.

The agent also asked them to reimburse the direct costs resulting from Mr S's complaint. The Inland Revenue refused these requests, which prompted Mr S's complaint to the Adjudicator.

We upheld this complaint.

The Inland Revenue said that, despite the outcome, their Enquiry had been justified. They stated that, apart from some costs incurred as a result of their requesting information that they already held, the remaining costs were incurred as a result of a legitimate and justifiable Enquiry. Under normal circumstances, we might have agreed with the Inland Revenue's view.

In this case, however, we established that, at the end of the Enquiry, the Inland Revenue wrote to Mr S's agent and admitted incorrectly that neither of the requirements for making a discovery assessment, set out at S29(4) and (5) TMA 1970, were satisfied.

In their letter to Mr S's agents, the Inland Revenue accepted that their client did identify the source of his German income when he submitted his tax return. He did not quantify the amount of income but the Inland Revenue accepted that this in itself did not amount to negligence on his behalf. Furthermore, the Inland Revenue accepted

that there was information on Mr S's tax return that should have alerted them to the fact that the return was incomplete. On that basis, the Inland Revenue acknowledged that the requirements for making a discovery assessment under Section 29 of TMA 1970 were not met. Following a further review of the complaint, however, the Inland Revenue found that the requirements were satisfied.

In light of the Inland Revenue's admission, we concluded that it would be inappropriate for them now to change their view. We recommended that they should reimburse Mr S with the remainder of the direct costs he incurred as a result of the Enquiry. We also recommended that they should reimburse Mr S for the direct costs he incurred in pursuing his complaint. The Inland Revenue agreed to do this and we settled the case by mediation.

Customs and Excise

Customs and Excise had a wide range of responsibilities and was split broadly into two operational areas. The Business Services and Taxes side of the organisation collected over a third of central Government revenue from indirect taxes, most notably VAT and duties such as those on alcohol and tobacco. It also helped businesses to comply with the various relevant requirements.

The Law Enforcement side of the organisation existed to fight crime by tackling tax fraud, preventing the importation of Class A drugs, firearms and paedophile material and the like, as well as enforcing restrictions on such things as the importation of excise goods. The department also collected and analysed trade statistics.

The future

The future holds enormous change for Customs and Excise, not only given their integration into HMRC but also because of the creation of the Serious Organised Crime Agency (SOCA) and the Revenue and Customs Prosecutions Office (RCPO). The Adjudicator's Office will play no part in the investigation of complaints about SOCA or RCPO.

The other traditional roles and responsibilities of what was Customs and Excise will carry on under the banner of HMRC and we will continue to deal with complaints that arise.

Indeed, we hope to play as large a part in the shaping of customer service in the new HMRC as we did in the past when dealing with the separate departments.

Business services and taxes related issues

In the past year, misdirection continued to be the single most common basis for complaints from traders about VAT. Customs and Excise always considered a claim to misdirection under the terms of the relevant extra-statutory concession, published in their Notice 48. When we investigate complaints about alleged misdirection, we look to see whether Customs and Excise exercised their discretion under the concession reasonably and consistently.

Over and above the terms of the concession, we also look to see whether Customs and Excise made a mistake in their dealings with the trader. This is because cases can arise where, although the criteria for granting the benefit of the concession are not met, there are still grounds for considering redress as a consequence of a mistake, under the provisions of Customs and Excise's code of practice on complaints.

The following case summaries give a feel for the variety of complaints that we investigate



about VAT in general and misdirection in particular.

VAT case summary

Mr A practised as a health care professional for many years. In April 2002, he was advised correctly by his accountants that, because he was not on a statutory register maintained in accordance with the legislation, his services were not exempt from VAT. On that basis, he registered for VAT and his first VAT return, covering a 12-year period, reported a substantial amount of VAT due.

Mr A complained that Customs and Excise were unreasonable when they refused to apply their misunderstanding concession and remit the arrears of VAT.

We did not uphold this complaint.

We concluded that not all the conditions of the misunderstanding concession were satisfied. The need for Mr A to be statutorily registered, if his services were to be exempt from VAT, was an aspect of tax clearly covered in Customs and Excise's published guidance.

In November 2002, Customs and Excise had said that some of the services supplied by Mr A were directly supervised and were, therefore, exempt from VAT. A month later they said that the advice was wrong, because there was no direct supervision. They acknowledged that their earlier advice constituted misdirection and agreed to remit the VAT for the relevant month.

Mr A's accountants argued that, since Customs and Excise had "got it wrong" in relation to direct supervision, Mr A should be forgiven for his misunderstanding about the need for statutory registration. We did not accept this argument, taking the view that the accountants were seeking to

connect two issues which should be considered separately.

Mr A made representations through his accountants about the financial burden that he now faced when he had genuinely believed that he was exempt from paying VAT. We did not, however, conclude that Customs and Excise acted unreasonably when they declined to grant an individual extra statutory concession and remit the VAT.

We concluded that Customs and Excise gave proper consideration to Mr A's financial circumstances. They had recognised that belated notification cases are relatively common, often leading to large and unexpected VAT bills for suppliers. In reaching their decision on this case, they were clearly concerned about the potential unfairness if there was remission in one such case and not in others. We did not think that it was unreasonable of them to take this into account when reaching their decision.

Excise duty case summary

B Ltd trade as a restaurant, regularly importing specialist beers, spirits and wines from abroad. From the outset, B Ltd used what is known as the 'Occasional Importers Scheme' for duty purposes. This requires them to submit a form to Customs and Excise showing the amount of goods imported and the duty payable.

Under the scheme, B Ltd were required to work out the duty themselves and then pay it to a Customs office in advance of the importation. Customs and Excise were entitled to inspect the goods on arrival.

B Ltd were unsure how to calculate the duty, and sought advice from Customs and Excise, who responded by giving B Ltd an extract

VAT case summaries

from their internal training material, which showed how to calculate the duty. Unfortunately, the example provided in this material contained an error in the beer duty calculation, which led B Ltd to underdeclare the amount of duty in respect of two importations, for which Customs and Excise subsequently issued an assessment.

B Ltd complained that they had received misleading advice from Customs and Excise. B Ltd had taken account of the duty declared and paid when deciding on the selling price of the beers in the restaurant. Had they known the true amount of duty payable, they said that they would have set their prices higher. They claimed that they were unable to recoup their loss if the assessment to duty was to stand.

We partially upheld this complaint.

We found that Customs and Excise made a mistake when they provided B Ltd with the extract from their training material and concluded that B Ltd's subsequent misdeclaration of duty was a direct result of this. Customs and Excise agreed and offered compensation calculated by reference to the difference between the artificially reduced selling price of the beers charged by the restaurant and the higher cost B Ltd currently charged, taking account of the duty that was properly payable. We considered Customs and Excise's offer to be fair and reasonable.

We also found that Customs and Excise took an unreasonably long time to consider B Ltd's request for a review and, although they had previously apologised for this, we considered that they should also offer a consolatory payment of £100.

B Ltd felt able to accept Customs and Excise's offer of redress and, on this basis,

we were able to settle the complaint by our preferred method of mediation.

Customs duty case summary

As a result of errors in the tariff published by Customs and Excise, they did not collect duty on the importation of goods by C Ltd over a period of 18 months. During this time, a visiting Customs officer had confirmed to C Ltd, in writing, that the goods they imported were not subject to duty. When Customs discovered their mistake, they issued a demand to C Ltd for the duty that had been undercharged. C Ltd then appealed to the VAT and Duties Tribunal.

The law determining when an error allows an importer to seek repayment or remission of Duty is European Union law; specifically the Customs Code. This states that a trader can only recover duty paid as a result of an error by Customs if that error was not "reasonably detectable". The Tribunal dismissed C Ltd's appeal on the grounds that, as the correct duty rates had been published in the EU's Official Journal, the error in the Tariff was reasonably detectable. C Ltd did not appeal the Tribunal's decision but, instead, complained to Customs and Excise and then to us, asking for the duty to be remitted.

In responding to the complaint, Customs and Excise argued that, because the Tribunal makes its decisions on an evaluation of the importer's reasonableness as defined in the Customs Code, repayment due to an error by Customs was purely within the jurisdiction of the Tribunal. On that basis, they said that the Adjudicator could not find a mistake under the Code of Practice on complaints. They also argued that any decision to uphold the complaint and recommend an ex-gratia payment to C Ltd might undermine the EC Treaty or Customs Code and, potentially, be contrary to EU law.

We partially upheld this complaint.

We concluded that, while the Tribunal and courts were bound to apply their particular test of reasonable detectability, it was still possible to consider whether C Ltd's behaviour had been reasonable in all the circumstances.

We found that it had been reasonable, in all the circumstances, for C Ltd to rely on the officer's written advice, even though the Tribunal had found as fact that it had not been a binding ruling. Under the Code of Practice, it was not open to us to recommend duty remission.

We considered what adverse effects C Ltd might have suffered as a result of Customs and Excise's mistake. We recommended that they should compensate C Ltd for any actual loss or additional cost that the company could show was a direct result of the mistake, to the extent that the EU Commission accepted this as not contrary to principles of EU law. We also recommended that Customs and Excise make far more prominent in their literature the requirement for traders to avail themselves of the information in the Official Journal.

Customs and Excise accepted the recommendation and have approached the EU Commission for its view on the legality of the recommendation of compensation.

The Commission's view will help to define the extent of the Adjudicator's remit as regards Customs and Excise's mistakes involving duty rates falling within the ambit of the Customs Code.

Law enforcement related issues

We made some observations last year that are worth repeating here because they seek to draw out the distinction between complaints about law enforcement type activity and routine tax compliance activity.

In comparison with normal excise and VAT compliance related activity, we have, historically, seen relatively few complaints originating from Customs and Excise's efforts to detect and prevent the importation of drugs, firearms, pornographic material, and the like. This is because there is far less scope for doubt or misunderstanding on the part of the individual when it comes to the detection of such items. As we have said in previous years, they are prohibited no matter what the quantity and society at large is well aware that this is the case.

Unfortunately, given the tendency of those wishing to smuggle such illicit material to pose as law-abiding travellers or compliant businesses, it is inevitable that innocent people get caught up in the operational procedures that are in place to enforce restrictions or protect society. It is not, therefore, surprising that we continue to receive complaints from those who feel that Customs and Excise have not treated them appropriately.

By their very nature, some of the travelling public's interactions with officials are confrontational and stressful, with those affected retaining often deep-rooted feelings of injustice. Complaints arising from such situations can be difficult to investigate, especially where we face a direct conflict of evidence, with one party's recollection of events at odds with the other's and no independent corroborative evidence available.

The following case examples show the range of issues typically encountered in Law Enforcement related complaints and indicate the valuable learning points that can emerge for the organisation.

Law Enforcement case summary 1

Mr and Mrs D cut short their holiday abroad because Mrs D was taken ill. On arrival back in the UK, Customs and Excise stopped the couple and searched their vehicle. Mr D subsequently complained about the distress caused by the search and claimed that the officers had damaged some of the contents of his vehicle.

Customs and Excise were unable to identify which of their officers, if any, had been involved in the search; nor whether any other agency had carried out the search. On that basis, they rejected the complaint.

We upheld this complaint.

We asked Customs and Excise to investigate matters again. This time, the investigation established both that Customs and Excise had indeed carried out the search and also that they could identify the officers involved. They offered Mr D £250 in recognition of their previous failure to investigate matters properly and the distress that this caused.

They also agreed to pay for repair or replacement of the damaged items, even though they were by no means certain that their officers were responsible for the damage. We considered that, in the circumstances, Customs and Excise's offer was both fair and reasonable.

Mr D felt able to accept Customs and Excise's offer of redress and we were able to settle the complaint by mediation. We were very pleased to learn that Customs

and Excise used this complaint to review and improve their local systems.

Law Enforcement case summary 2

On returning from a trip abroad, Mr E was intercepted by a Customs officer in the green channel of a UK airport. The officer questioned Mr E before seizing a quantity of cigarettes that Mr E had brought into the country.

Mr E complained that the officer approached him from behind, which Mr E found frightening and did not properly identify himself. He was also concerned that, after the officer made an entry in his notebook, which Mr E signed, a further paragraph was added but the officer did not ask him to sign the addition. Mr E also complained that the officer made some errors when completing the seizure information notice (form C156).

We did not uphold this complaint.

There was conflicting evidence as to whether Mr E was approached from behind or in front but we did not think that it was necessarily wrong for a Customs officer to approach a traveller from behind in a green channel. There was also conflicting evidence as to whether the officer properly identified himself. We were, therefore, unable to form an opinion on this aspect of the complaint.

We did not criticise the officer for not providing Mr E with an opportunity to sign the addition to his notebook. In reaching this decision, we noted that the addition did not disadvantage Mr E in any way and he had not queried its accuracy. We also understood that there was no formal requirement for a traveller to sign a Customs officer's statement as recorded in his notebook.

Customs and Excise had already apologised for the minor clerical errors in the officer's completion of the seizure information notice and we considered that this was an adequate response on their part.

This case did, however, draw attention to a notable inconsistency. On the one hand, in some circumstances, customs officers should not give their names to travellers. On the other hand, the seizure information notice has a space on it for the officer to write his name and a copy of the notice is given to the traveller. Customs and Excise have agreed to introduce a revised version of the notice that removes this inconsistency.

Law Enforcement case summary 3

Mr F, a trader, imported a twenty-foot container from Nigeria, containing cartons of beer. Customs officers examined the container at Liverpool docks. When the container reached Mr F's premises in London, he found that some of the contents were damaged. When the doors of the container were opened, several cartons of beer fell out and broke on the pavement.

Mr F complained that the Customs officers at Liverpool docks failed to secure the load properly after they carried out their examination. He claimed compensation for the ensuing damage.

We did not uphold this complaint.

Customs and Excise told us that, when the container was opened in Liverpool, they found that the contents were very poorly stowed. The cartons of beer had shifted around during transportation and were packed in poor quality cardboard boxes, many of which were soggy and damaged.

Customs and Excise took the view that the damage was due to the unsatisfactory stowing of the goods in Nigeria and the poor quality packaging. We felt that this conclusion was probably correct. We also thought it quite likely that further damage would have occurred on the onward journey to London, irrespective of the examination by Customs officers.

Only a very small proportion of the load was taken out of the container during the examination and then repacked. We could not conclude that the repacking was carried out in an unsatisfactory manner, nor did we think that it was Customs and Excise's responsibility to improve the way in which the load was stacked.

Customs and Excise acknowledged that they should have notified the shipping agent when they opened the container and saw the damage. Their failure to do so, however, did not, in our view, mean that Customs and Excise were responsible for any subsequent damage. In any event, we were unable to identify what proportion of the damage occurred before the examination and what proportion occurred afterwards.

Valuation Office Agency

The VOA is responsible primarily for the Council Tax banding on domestic properties, 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.

The following case summaries provide examples of the type of complaints that we have investigated over the past year.

VOA case summary 1

Mr A complained about the way the VOA handled the alteration of Council Tax bands for a property that he owned, which was previously subdivided into a number of separate units.

Mr A purchased the property in question in the mid 1990s, at which time it was arranged as a house with multiple occupation and six separate Council Tax bands, all at band A. Mr A subsequently made a proposal to change the Valuation List in respect of the property.

A Valuation Tribunal hearing was arranged and, a month before the hearing took place,

the VOA carried out an inspection of the property. On the basis of the inspection, the VOA proposed to alter the Valuation List to show three Council Tax bands instead of six. Following further discussion with Mr A, the VOA agreed that there should only be two separate Council Tax bands for the property. The Valuation Tribunal confirmed this decision but, when the VOA came to update the Valuation List, they mistakenly entered three separate Council Tax bands instead of two.

The mistake did not come to light until 2000, when the local County Council issued Council Tax bills to Mr A that were backdated to the date when he purchased the property. The bills were calculated on the incorrect basis that there were three separate Council Tax bands for the property.

Mr A contacted the VOA and asked them to correct their mistake on the Valuation List but 11 months passed before they did this. The VOA subsequently acknowledged their mistakes and delays and paid Mr A compensation, including out of pocket expenses, amounting to £350 in total.

Mr A was dissatisfied with this and claimed compensation in excess of £2 million. He considered that, as a direct result of the VOA's mistakes and delays, he was pursued for Council Tax that he did not owe. He alleged that this, in turn, resulted in him and a colleague being made redundant. He said that he and his family had suffered



considerable worry and distress and that he had developed a stress-induced medical condition as a result of the VOA's poor handling of his case.

We did not uphold this complaint.

Mr A clearly suffered considerable distress as a result of the enforcement action taken against him by the County Council, who were quick to assert that they were only acting in accordance with the VOA's instructions.

The enforcement action included summonses to Magistrates' Court and numerous visits from bailiffs but none of these events were matters that we could investigate. We also saw that Mr A had to endure a number of upsetting events concerning the property in question, culminating in a fire at the property, which may, or may not, have been the result of arson. None of these unfortunate events, however, were attributable to the actions of the VOA.

A significant proportion of the compensation that Mr A claimed was in respect of future losses in terms of salary and pension. We could see no evidence to suggest that the VOA were responsible for his redundancy and the consequent losses that he identified.

Although we were sympathetic to Mr A's concerns, we did not conclude that the majority of his difficulties came as a direct result of the VOA's mistakes and delays. While we were very critical of the unacceptable delays that Mr A experienced in his dealings with the VOA, we considered that the compensation that they paid before he approached our office was, in the circumstances, reasonable.

VOA case summary 2

Mrs B purchased a property, believing the Council Tax band to be correct. She was concerned to receive a letter from a VOA Listing Officer (LO), who said that he wanted to inspect the property because alterations had been carried out by the previous occupiers (Mr and Mrs C). He said that these alterations could result in an alteration to the Council Tax band.

Mr and Mrs C had not carried out any alterations themselves. The previous owners, a firm of property developers, were responsible for the changes. When the developers sold the property to Mr and Mrs C, the LO should have conducted an inspection to see if there was any need to alter the Council Tax band. Unfortunately, as a result of shortcomings with the VOA's computer system, together with misleading information provided by the local council, the LO did not realise that the transaction involved a newly altered property.

The LO subsequently increased the Council Tax band from B to F, which meant that Mrs B, a pensioner, faced a backdated bill of £450 that she was not expecting. She was also faced with the prospect of substantially higher bills in the future.

Mrs B spent many hours writing letters and making telephone calls to the VOA, the Council and the Valuation Tribunal, before the VOA agreed that the correct Council Tax band for her house was D and not F. She also had the added inconvenience of three appointments made by the LO to inspect her house, including one where Mrs B waited in all day for an officer who did not arrive because he went to the wrong property.

Mrs B felt that she had suffered considerably as a result of the VOA's mistakes and delays. In addition to the time she spent in dealing with these difficulties, Mrs B felt that her

VOA case summaries

health had suffered as a result of the worry that she experienced. She also believed that the VOA had questioned her honesty because they did not have accurate records of every contact she had made, which meant that they asked her for further details.

The VOA accepted that they made mistakes and delays and offered Mrs B a total of £175 in compensation to cover costs, worry and distress and poor complaints handling. Mrs B refused to accept the offer of compensation and said that she considered it to be insulting.

We partially upheld this complaint.

We could not conclude that the LO's initial decision to place Mrs B's property in band F, rather than in band D, was a mistake. Our remit does not extend to commenting on decisions concerning appropriate Council Tax bands.

In addition, we could not ask the VOA to pay for Mrs B's time spent in dealing with her Council Tax affairs because she could not demonstrate that this had resulted in her suffering a direct and quantifiable financial loss. Similarly, we could not conclude that Mrs B's health problems, which continued after the VOA had corrected the Council Tax band and offered redress, were a direct result of the VOA's actions.

We did, however, conclude that the VOA's offers of compensation, prior to Mrs B contacting this office, did not fully recognise the worry and distress that she experienced. Following discussions with this office, the VOA increased their offer by £50, which we thought was reasonable. Mrs B accepted this offer and her complaint was resolved through mediation.

Public Guardianship Office

The Public Guardianship Office (PGO) is an agency of the Department for Constitutional Affairs. It was formed in April 2001 from the Receivership and Protection divisions of the former Public Trust Office. It plays a vital role in protecting the financial security of mentally incapacitated people, who the PGO refer to as their 'clients', or 'patients'.

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.

The following case summaries illustrate the sorts of issues that we investigate about the PGO. These are appreciably different to those that we see in complaints about the revenue collecting organisations that we deal

with. There is, however, a degree of commonality in cases where poor complaint handling forms a key aspect of the complaint.

PGO case summary 1

Mr A applied to the PGO to become his mother's Receiver. Unfortunately, his application was subjected to numerous mistakes and delays by the PGO.

These included:

- failure to inform Mr A's mother of a Court of Protection hearing in connection with the application
- failure to ask the Court of Protection to consider granting Mr A with an interim direction while his application was being processed. He needed this to pay for essential care items for his mother
- lengthy delays, which prevented Mr A's mother from obtaining access to money that had been bequeathed to her.

As a direct result of the PGO's failure to handle this case properly, Mr A and his family suffered considerable worry and distress. Mr A also incurred costs in his attempts to get matters sorted out.

Mr A ran his own business and also claimed that the amount of time that he had devoted to dealing with the PGO resulted in him losing earnings.

The PGO acknowledged that they failed to handle the case properly and paid Mr A £250 in recognition of the resulting worry and distress. Mr A remained dissatisfied with the level of compensation and complained to the Adjudicator.

We upheld this complaint.

Our review of the PGO's handling of this case concluded that Mr A had received a very poor level of service from the PGO.

We asked the PGO to:

- reimburse Mr A's direct costs, amounting to £255

- pay a further £450 to recognise the worry and distress that Mr A suffered
- pay £300 for the unacceptable manner in which the complaint was handled
- pay £100 each to Mr A's mother and his wife in recognition of the worry and distress that they suffered.

We explained to Mr A that we could not ask the PGO to compensate him for his alleged lost earnings without clear evidence that his business had lost money as a direct result of the PGO's mistakes and delays. As he could not provide acceptable evidence, this aspect of his complaint could not be taken further.

In reaching this conclusion, we noted that the redress guidance provided for staff in the PGO did not explain adequately the conditions that must be met in order for compensation for lost earnings to be awarded. We asked them to ensure that these instructions were made clear.

During our investigation, we saw that there was a discrepancy between the internal instructions used by staff at the PGO and the information held in their Code of Practice - *Putting things right*, concerning appropriate levels of compensation. We asked the PGO to make it clear to their staff that payments made in recognition of worry and distress can exceed £250, if the circumstances are warranted.

PGO case summary 2

Receivers are required to submit an annual account of the patient's income and expenditure (known as the 'Receivership Account') to the PGO. When the patient dies and the receivership comes to an end, a final account is submitted. On the death of a patient, the Court of Protection must grant

PGO case summaries

'Final Directions' for winding up the deceased person's financial affairs before matters can be concluded and any estate distributed.

In August 2001, Mr B was appointed Receiver for his father, who died in the following February. A firm of solicitors were appointed as executors of the will.

Mr B submitted his final Receivership Account to the PGO in May 2002 but the executors did not apply for Final Directions until April 2003. After receipt of the application for Final Directions, the PGO began making enquiries into the final Receivership Account and also into gifts that the deceased had made to Mr B and other family members prior to Mr B's appointment as Receiver.

The Court of Protection did not pass the final Receivership Account until April 2004. Mr B challenged the PGO/ Court of Protection's right to make enquiries into gifts that his late father had made prior to Mr B's appointment as Receiver. He also complained about the two-year delay before the final Receivership

Account was passed and delays in dealing with his subsequent complaint.

We partially upheld this complaint.

We established that, once the Court of Protection/ PGO have established jurisdiction, they are entitled to direct enquiries into any dealings prior to the appointment of a Receiver. We also found that the PGO could not process the Receivership Account until the executors had applied for Final Directions. We saw that there were mistakes in the final Receivership Account and we concluded that it was reasonable for the PGO to investigate these.

We did find, however, that the PGO had delayed unreasonably using information that was provided by Mr B and his accountant. We also found that they delayed in responding to correspondence from Mr B. The PGO agreed to pay £100 in recognition of the worry and distress caused by their delays and £50 for their poor handling of the complaint. We considered that, in the circumstances, this was reasonable.

The Insolvency Service

The Insolvency Service is an Executive Agency of the Department of Trade and Industry (DTI). It deals with insolvency matters in England and Wales and some limited insolvency matters in Scotland. Its Official Receivers are responsible for, among other things:

- undertaking the initial administration of the estates of bankrupts and companies in compulsory liquidation
- acting as trustee/liquidator where no private sector insolvency practitioner is appointed
- investigating the circumstances and causes of failure of companies wound up by the court and of individuals subject to bankruptcy orders
- reporting any misconduct on the part of directors or bankrupts.

Its various headquarters divisions deal with such things as the disqualification of directors and the authorisation and regulation of the insolvency profession.

Through its network of Redundancy Payments Offices, The Insolvency Service is also responsible for assessing and paying statutory entitlement to redundancy payments when an employer cannot, or will not, pay its employees.

Complaints about The Insolvency Service

Official Receivers are statutory office holders and, as such, they find themselves directly accountable to the courts for many of their actions. This is an important point for us because, where an issue about any action or decision has an established means of challenge through the courts, it is not one that we can consider.

Perhaps, therefore, to a greater extent than with complaints about any other organisation with whom we deal, we need to examine complaints about The Insolvency Service very carefully to ensure that we investigate only those matters that cannot be resolved through the courts. Only the court can reverse or modify a decision about the administration of an estate.

IS case summary 1

Mr A was unhappy about being disqualified as a director, following the liquidation of a company in which he had been involved. In this case, rather than attending a court hearing, Mr A had agreed to sign an undertaking not to act as a director. The Insolvency Service told us that, if Mr A had a problem with the length of the undertaking, he could apply to court for it to be varied. Alternatively, if he was unhappy with the actual disqualification, he could apply to court to contest it. **As this office is not an alternative to the courts, we were unable to consider these particular matters.**

Mr A was not happy that The Insolvency Service imposed deadlines for replies to their letters. He felt he should have been

told about the possibility of a meeting with them at an earlier stage in the disqualification procedure. He said it was wrong that The Insolvency Service had not contacted him before they decided on disqualification action against him. He also felt there was not a thorough investigation prior to the decision to disqualify him.

We did not uphold this complaint.

We felt that The Insolvency Service's imposition of deadlines was reasonable. We were satisfied that they were merely trying to ensure the speedy progress of the case. The court will not normally allow any disqualification action more than 24 months after the liquidation so The Insolvency Service must progress matters within a set timescale.

We did not criticise The Insolvency Service for not publishing the fact that a meeting was available. They said that the opportunity for the director to contact them and discuss the situation was always available. The Insolvency Service assured us that meetings have been held in the past and that they are not averse to holding them.

It was unfortunate that it took five months and the intervention of an MP finally to request a meeting. We were, however, pleased to note that, to avoid any confusion in the future, The Insolvency Service will, from now on, point out to those in Mr A's position that a meeting is available early in proceedings.

**IS case
summaries**

The Insolvency Service's policy dictates that directors need not be contacted in every liquidation before a decision is taken to disqualify. We told Mr A that we could not comment on their policy and could only look at whether they had followed their standard practice. In this case, we felt they had followed that practice. We noted that The Insolvency Service plan to contact directors in the future before they are told whether they are likely to be disqualified.

IS case summary 2

Mrs B was declared bankrupt in 1991. Prior to the Bankruptcy Order, she jointly owned a property. Mrs B was aggrieved that she was not given the chance to purchase the equity in her property when she was made bankrupt in 1991. She believed that, when she was eventually given the opportunity to purchase the equity in 1998, house prices had risen, making it impossible for her to raise the necessary funds.

Mrs B did not, however, complain until 2003 when, on reviewing her case, The Insolvency Service passed her estate to an Insolvency Practitioner to act as trustee and deal with realising the equity in the house. Mrs B complained after being told by the trustee that the Official Receiver should have let her buy the equity in 1991.

We did not uphold this complaint.

We found that The Insolvency Service did not publicise the possibility of buying the beneficial interest in a jointly owned property until 1992, when they introduced a low cost conveyance scheme for this very purpose. A decision was made, however, not to contact all previous bankrupts who had properties registered on The Insolvency Service's protracted realisations register*. The Insolvency Service pointed out that neither the bankrupt, nor the bankrupt's spouse, has a right to buy and that the decision rests with the trustee.

We found that no mistake was made. It was not The Insolvency Service's policy to advertise possible transfers, nor were they required to offer this opportunity to Mrs B in 1991. They had, in this case, reviewed her file in 1998 and contacted Mrs B providing information on the possibility of her buying the beneficial interest. She decided not to take up this opportunity. This choice was unfortunate because information available suggests that there might have been little, if any, increase in property prices in Mrs B's area between 1991 and 1998.

Mrs B accepted our findings, and the complaint was resolved through mediation.

* See *The Insolvency Service Overview* section of this report for further details about the protracted realisations register.

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Publications

Leaflets and flyers

We are currently in the process of revising all of our leaflets and flyers following the launch of HMRC on 18 April 2005. During the summer of 2005, we hope to produce a new leaflet and flyer - *The Adjudicator's Office* - for complaints about HM Revenue & Customs - which will replace our current AO1 and AO2 leaflets, which covered the Inland Revenue and Customs and Excise respectively. In the meantime, we will continue to run down our stocks of AO1 and AO2.

The other leaflets in the AO range are:

- AO3 - Meetings with the Adjudicator's Office (notes for people making complaints)
- AO4 - Meetings with the Adjudicator's Office
(notes for Inland Revenue and Customs and Excise staff)
- AO5 - How to complain about the Public Guardianship Office
- AO6 - How to complain about The Insolvency Service

All of these leaflets contain references to the Inland Revenue and Customs and Excise so they will also be revised during the summer.

Annual reports



2004/2005



2003/2004

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