

1

office

45

staff

1419

investigations

6509

enquiries



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# Foreword

by the Adjudicator, Dame Barbara Mills DBE QC



The Adjudicator, Dame Barbara Mills DBE QC

I am pleased to present my Annual Report for the year to 31 March 2007, the eighth report covering my work as Adjudicator and the fourteenth concerning the work of this office.

The last year has been a period of consolidation for Her Majesty's Revenue & Customs (HMRC), following its creation by way of the merger of the Inland Revenue and HM Customs & Excise in April 2005. The new organisation set itself a challenging agenda, and I am happy to report that I have seen nothing that suggests this merger has so far had a negative impact on HMRC's customers.

I have, however, seen a further large increase in the number of HMRC tax credits complaints coming to me. I comment further on this below. In response to this increase, we settled 1419 investigations against 926 last year. Our average turnaround time increased from 19.72 weeks to 21.25 as a result of this influx, but customer satisfaction levels were maintained; and going forward should see a significant fall in turnaround times for the more straightforward tax credits cases. Once again this was achieved without any additional resources, and I would like to pay tribute to the hard work and commitment of all this office's staff over the last year.

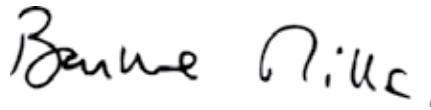
This year saw little change concerning complaints about the Valuation Office Agency (VOA), The Insolvency Service or the Public Guardianship Office (PGO). The PGO will become the new Office of the Public Guardian in October 2007. This will mark a major change both in the Office's remit and how it will operate. We are working with the PGO to ensure any disruption to complainants during the transition is kept to a minimum, and that the complaints handling arrangements of the new Office work as well as possible.

Turning to tax credits, which now form the bulk of our caseload, in previous years I expressed strong concerns. I also flagged up last year that a programme of work was underway within HMRC that should, over time, deliver significant improvements. Taking stock of this programme a year on, it is fair to say that things are going in the right direction. We now see fewer IT and processing errors, for example, and this year we upheld, or partially upheld, 56% of tax credits complaints compared to 74% last year. That

said, as mentioned above, we have seen a further, and very large, increase in the number of tax credits complaints coming to us. These usually concern a number of handling issues, but in the great majority of cases the core issue is HMRC's refusal to write off an overpayment (which often arose from an error by HMRC) under Code of Practice 26 (COP 26).

Even where the overpayment initially arose from an HMRC error, the reasonable belief test in COP 26 makes it unlikely it will be written off in the great majority of cases that come to our office. This is a test that does not take into account the impact of HMRC's error on the claimant, and is a source of frustration, therefore, to complainants, many of whom will be required to repay the overpayment over a number of years. HMRC has taken steps to improve its communications to tax credits

claimants. For example, the checklist on form TC602 (SN), that has been sent out with award notices since April 2006, helps claimants to make sure that the information about their personal circumstances shown on the award notice is correct and complete. It also asks claimants to get in touch with HMRC if anything is wrong, missing or incomplete and so helps to avoid overpayments building up. In my view, this is an area where much more needs to be done if claimants are to gain the necessary understanding of, and confidence in, the system.



**Dame Barbara Mills**  
The Adjudicator



# The work of the Adjudicator's Office



# Our role

We investigate and help to resolve complaints from individuals and businesses that remain unhappy about the way that their affairs have been handled by:

HM Revenue & Customs, including the Tax Credit Office

The Valuation Office Agency

The Insolvency Service

The Public Guardianship Office

We look to add value to the complaints handling of the organisations by aiming to be widely seen, and used, by the departments and the communities they serve, as:

- a trusted provider of assurance and, where appropriate, redress; and
- an informed and intelligent advocate for service improvement.

In all our dealings with complainants and the departments complained about, we will apply our core values of being:

- objective (showing fairness, impartiality and independence)
- accessible (offering a service free to the complainant)
- efficient and outcome driven (striving continuously for value for money).

We regard every complainant, department and organisation with whom we interact as customers, and the business goals and direction set out in our business plan focus almost exclusively on maintaining and improving the service we provide to all of them.

Before we look at a complaint, we expect the organisation concerned to have had an opportunity to resolve matters at a senior level. This means that complainants will need to have exhausted the organisation's own complaints procedure before contacting us.

It is our role to consider whether or not the

organisation have handled the complaint appropriately and given a reasonable decision. Where we think they have fallen short, we will recommend what they need to do to put matters right under the terms of their Codes of Practice or guidance on complaints. This may include making suggestions where we think this could be of benefit to the wider public.

**“We regard every complainant, department and organisation with whom we interact as customers.”**

We cannot require the organisation to do anything outside the terms of their Codes of Practice or guidance on complaints. Nor can we ask them to act outside their current procedural instructions (e.g. COP 26 “What happens if we have paid you too much tax credit?”).

While there are some areas that we cannot consider, such as disputes about aspects of departmental policy and matters of law, we can look at complaints about:

- mistakes
- unreasonable delays
- poor and misleading advice
- inappropriate staff behaviour
- the use of discretion.

### How we settle complaints

If we believe that the complaint would best be settled by recommendation letter, the Adjudicator will write to the complainant personally with her findings. We call these letters 'recommendation' letters because they set out what, if anything, the Adjudicator 'recommends' the organisations should do to put things right. If the Adjudicator believes that the organisation has already dealt with the complaint adequately, she will say so.

Not all complaints will be settled by recommendation. We may be able to find a resolution to the complaint that is acceptable to the complainant and the organisation. If we are able to do this, we will close the case on that basis. We call this process 'mediation'. We will continually review the way we investigate and settle complaints.

**"To date, the organisations that we investigate have accepted all of the Adjudicator's recommendations."**

However we resolve the complaint, it must be consistent with the organisation's own instructions and Codes of Practice. This could include asking the organisation to apologise and to meet any additional costs that the complainant has incurred as a direct result of their mistakes or delays - things like postage, telephone calls or the cost of professional advice. Or we might ask the organisation to make a small payment to recognise any worry and distress that the complainant has suffered.

To date, the organisations that we investigate have accepted all of the Adjudicator's recommendations.

### Coping with an increased workload

The very large increase in the number of tax credit complaints coming to us this year set the office a significant challenge, especially as we had no additional resources available to us. We worked hard to avoid a significant increase in

the time complainants had to wait for a decision.

Throughout the year, we carefully examined our casework processes, in order to deal with cases more quickly, while maintaining the quality of our work. We worked closely with the Tax Credit Office (TCO) in order to identify what information about each complaint we needed in order to enable us to examine the complaint properly.

### Communication

We are in the process of developing and improving our communications with our customers (both complainants and organisations).

We published a revised AO1 leaflet this year, in order to reflect changes in our working practices and also to give complainants a clearer idea of how we might deal with their complaints.

The Adjudicator's Office  
for complaints about  
HM Revenue & Customs and  
the Valuation Office Agency



THE  
ADJUDICATOR'S  
OFFICE

We have taken steps to ensure that the organisations issue this leaflet to complainants at the appropriate stage of the complaint (when that organisation's own complaints procedure has been exhausted).

We will also be further updating our website this year, in order to provide complainants with more information about our work and how we might deal with their complaint. We will also be looking at developing the way we communicate our role to the organisations we deal with.

### **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.



# Customer satisfaction

**68%**

overall level of satisfaction with our service

We have two main customer groups:

- complainants, comprising individuals and businesses who ask us to consider their complaints about the way the organisations have handled their affairs; and
- the organisations themselves, who look to us to provide feedback and opinion on specific cases, on complaint handling matters in the wider context, and on customer service improvement in general.

We take steps to measure how each of our customer groups rate our service. For complainants, we use the services of an independent market research company, British Market Research Bureau International (BMRB) to conduct telephone surveys on our behalf and to report their findings. For departments, we ask how they feel about the service we provide to them, for example the quality of our feedback, and the added value of our input. We are also working with consultants to review our methods of communication.

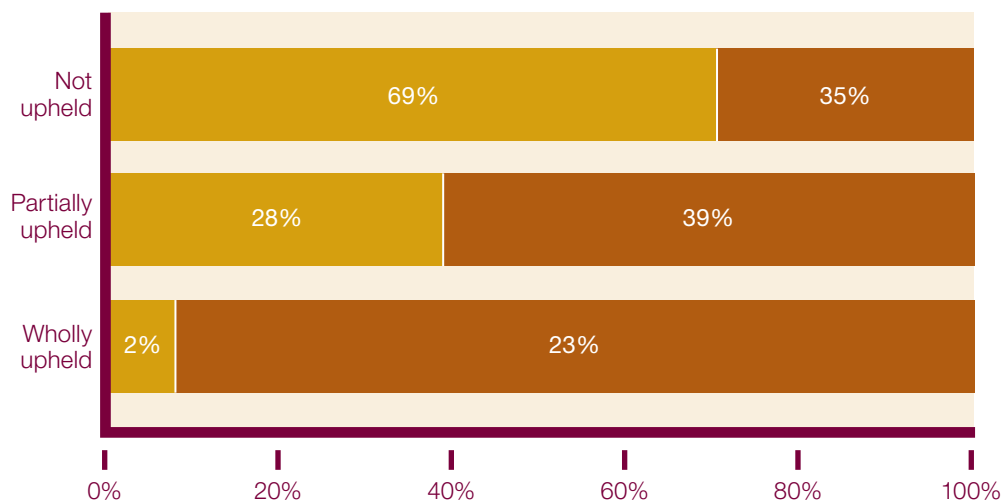
### Complainants

In conjunction with BMRB we have refined our customer survey to reflect developments in the way we work. This year BMRB contacted 274 complainants and sought feedback on a number of key service issues. The surveys provide us with useful data on overall satisfaction levels and give an indication of where we may need to concentrate our efforts.

It is generally accepted that a person's overall satisfaction with a complaints service will be largely dependent on the outcome of that person's individual complaint. The following table provides a graphic picture of this.

**Satisfaction with outcome of complaint by whether complaint upheld**  
Base: All complainants (274)

Dissatisfied  
Satisfied



Level of satisfaction with the service received from the Adjudicator's Office			
Year	04-05	05-06	06-07
Base: All respondents	131	249	274
	%	%	%
Very satisfied	41	41	36
Fairly satisfied	24	27	31
Not very satisfied	18	12	12
Not at all satisfied	15	19	20
<b>Satisfied</b>	<b>65</b>	<b>67</b>	<b>68</b>
<b>Not satisfied</b>	<b>34</b>	<b>32</b>	<b>32</b>

It is because a person's opinion about the service we provide is so linked to the outcome of their complaint that, however hard we try to find ways of gauging opinion, we can never totally eliminate the bias factor.

Nevertheless, it is pleasing to note that, whilst we have investigated our largest number of cases this year, we have continued slightly to improve overall levels of satisfaction at 68%.

Note: As part of changes made to this year's

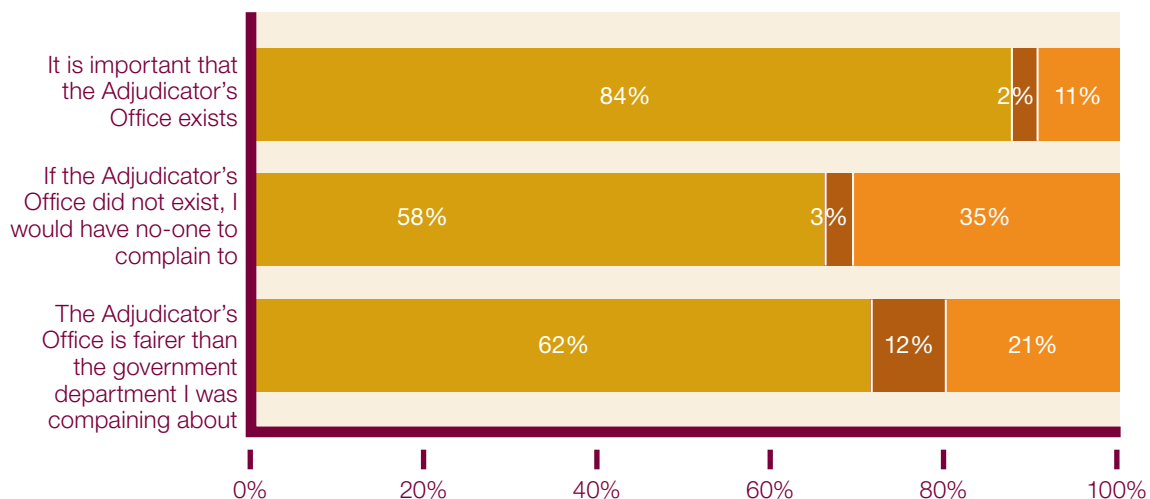
survey, BMRB have aligned the results to reflect more accurately the period covered by our Annual Report (April 2006 to March 2007). For comparative purposes, the results for the 04/05 and 05/06 years have also been revised.

It is also very encouraging to see how positively complainants responded to questions about the importance of the Adjudicator's Office's place on the complaints map, and the extent to which we are seen as fair.

### Feelings on the value and usefulness of the Adjudicator's Office

Base: All complainants (209)

Agree  
Neutral  
Disagree



### The organisations

We are very pleased with the feedback received from all of the organisations with whom we deal. Throughout the year, they have accepted all of the Adjudicator's recommendations. And they have told us that our feedback to them, both on specific cases and on wider issues, has informed service improvement. This is extremely gratifying, because it demonstrates the value to be derived from complaints in terms of lessons learned, and the added value this office is able to provide to help and encourage continuous improvement.

The Public Guardianship Office are in the throes of significant change, and we are delighted that they see the Adjudicator's Office as having a role to play in helping them to improve new policies and procedures on an ongoing basis. We think this is a very positive approach, because it looks to exploit the wealth of experience we have built up over the years on customer service matters. We have always believed that taking account of such matters at the earliest stage of the design of policies and procedures is key to minimising problems later on.

HMRC too are undergoing change on an unprecedented scale, and we are pleased that their feedback to us indicates that they value our input and suggestions on complaints, and have used this to make improvements across a hugely diverse range of activity.



# Overview

**1419**

Number of complaints we settled  
(compared to 926 last year)



# HM Revenue & Customs

The last year has been a period of consolidation for Her Majesty's Revenue & Customs (HMRC), following its creation by way of the merger of the Inland Revenue and Customs & Excise in April 2005. The most significant development for us was a further large increase in tax credits complaints. As a result, 80% of all complaints handled by the office in 2006/07 concerned tax credits. And the office in total settled 1419 investigations against 926 last year.

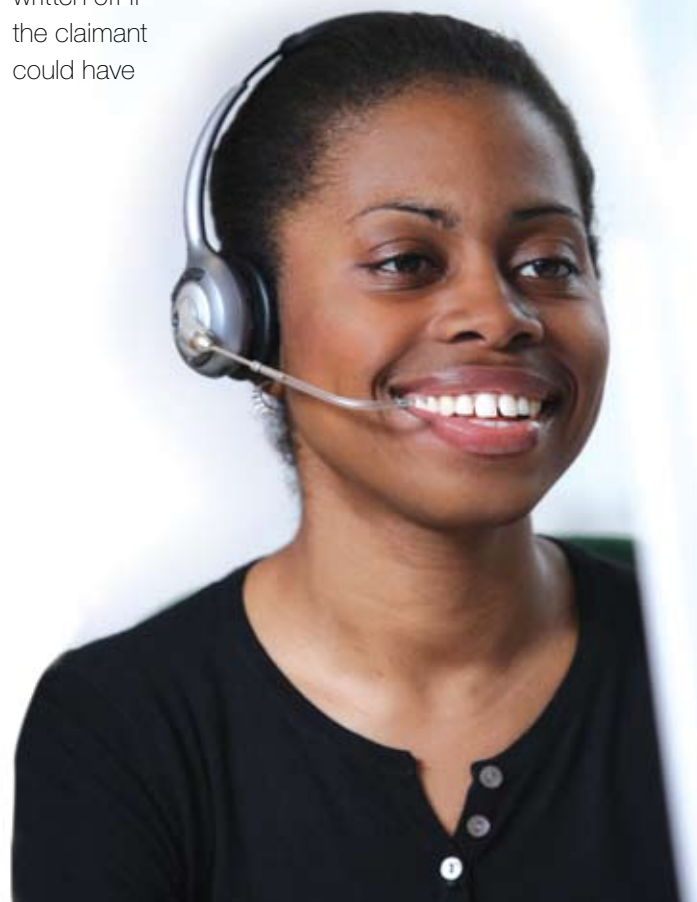
Last year we flagged up that HMRC had in place a major programme of work to improve the tax credits system. We are beginning to see the fruits of this. There are now fewer IT and processing errors and, despite the large increase in tax credits complaints, there was a reduction from 74% to 56% in the number of complaints we upheld, either fully or partially, in the complainant's favour. In the great majority of complaints, this resulted from the handling of the claim or complaint, rather than the decision not to write off the overpayment. Our working with HMRC on how to maintain progress has focused on two areas: disputed overpayments and complaints handling.

## **Disputed overpayments and Code of Practice 26**

Virtually all of the tax credits complaints that come to us cover a number of handling issues. In the great majority of these cases, however, the core issue is HMRC's refusal to write off an overpayment. HMRC's published guidance setting out the circumstances in which they will write off overpayments of tax credits is in Code of Practice 26 – "What happens if we have paid you too much tax credit?". Such overpayments can arise because of errors by the claimant, errors by HMRC or a combination of both. There are two principal ways in which claimant error can arise: - the claimant has completed the claim form incorrectly and/or the claimant has failed to inform the Tax Credit Office (TCO)

of changes of household circumstances. There are also two principal ways in which HMRC error can arise: - HMRC fails to add or correct new information in their system when it has been provided by the claimant and/or there is computer system error.

The difference between these causes of overpayments is important. If they arise because of claimant error, the overpayments cannot be written off under Code of Practice 26, unless the hardship provisions apply. If they arise because of HMRC error, they can be written off if the claimant could have



reasonably believed their award was correct. This, however, in many cases, is a high hurdle to get over. If, for example, the claimant has been sent an award notice which shows errors on the face of it, but has not noticed it, then the claimant fails the reasonable belief test. Secondly, if no notice has been sent, but the claimant should have expected to receive one and the change in payments are inconsistent with their reasonable expectations, again they will fail. Thirdly, if the claimant has noticed the errors of whatever type and tells HMRC, then they will fail because they know that the payments which they are receiving are wrong.

In the overwhelming majority of the complaints concerning disputed overpayments we see, either the overpayment was a result of claimant

the particular impact on the claimant of that error. Where the claimant has been overpaid for a number of years, the overpayment can run into many thousands of pounds; and five figure amounts are not uncommon. Unless the claimant's circumstances are covered by COP 26's hardship provisions, therefore, many vulnerable claimants, or those on low incomes, are left either with reduced tax credits awards for some years into the future, or in debt.

We have seen a number of cases where, as a result of this, disillusioned claimants are seeking to leave the system. HMRC have made some improvements in their communications (e.g. in the award and renewal notice) but, given the constraints of the reasonable belief test, there is still some way to go.

**“We worked with the TCO to put in place streamlined and more flexible arrangements that ensured their reports were better tailored to the circumstances of the case.”**

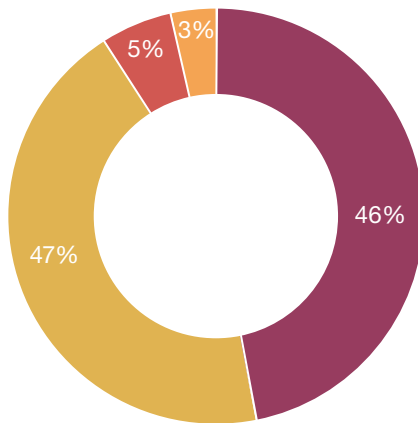
error or, where the overpayment arose from HMRC error, the circumstances fall into one of the three above mentioned categories. So in such cases, provided we are satisfied HMRC have followed their guidance, we cannot uphold that aspect of the complaint. Where the overpayment arose from HMRC error, this is often a source of great frustration to complainants.

The tax credits system places a responsibility on claimants to report changes in circumstances and check the personal details shown on their award notices. The reasonable belief test in Code of Practice 26 reflects this. This approach in turn, however, places an onus on HMRC to ensure its communications are of a sufficiently high standard to ensure claimants know what they need to do. The check list on form TC602(SN), that has been sent out with award notices since April 2006, helps claimants to make sure that the information about their personal circumstances shown on the award notice is correct and complete. It is, however, an approach to determining the level of redress for the HMRC error that fails to take into account

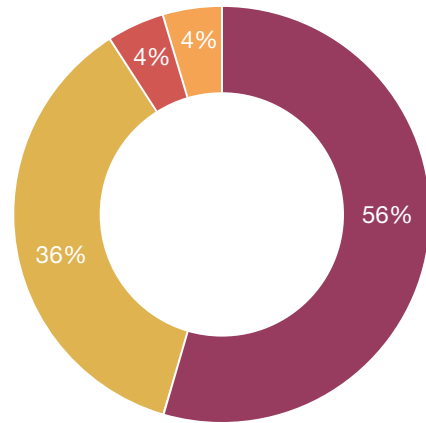
An area of particular difficulty is how HMRC recover overpayments resulting from a joint claim after the couple have separated. The legal position is that both partners can be pursued regardless of who had received the money. HMRC's Debt Management & Banking have now changed their policy and, in cases where payments continue after HMRC have been advised of the separation, they will consider seeking to recover only from the partner who received the relevant payments.

### **Tax Credits complaints**

Last year we highlighted changes in how the TCO handled complaints (centred on providing the complainant with a single point of contact throughout the complaints handling process) and expressed the hope that this improvement would result in a sharp drop in the number of complaints escalating to us. Instead, there was a further large increase in the tax credits complaints we received (1774, up from 569 the previous year). Such complaints now comprise 80% of all complaints we deal with. Nearly all these complaints concern disputed

**HMRC investigation results**

Upheld  
not upheld  
withdrawn  
department reconsidered

**Tax Credit investigation results**

Upheld  
not upheld  
withdrawn  
department reconsidered

overpayments, so it is likely that complainant frustration at COP 26 was a major factor behind this increase.

This increase posed challenges to both ourselves and the TCO. The TCO needed to ensure they could provide us with the additional reports in a reasonable timescale, while we needed to ensure we could deal with these additional cases in ways that did not compromise the service we gave to any of our complainants (whether tax credits claimants or otherwise). To achieve this, we worked with the TCO to put in place streamlined and more flexible arrangements that ensured their reports were better tailored to the circumstances of the case and, in the more straightforward cases, the necessary reviews could be undertaken more quickly. The TCO rose to the challenge and, as a result, we settled 1033 tax credit investigations in total (compared to 377 last year) and, while the average turnaround time for settling complaints rose from 19.72 weeks last year to 21.25 weeks, customer satisfaction levels remained broadly constant.

Going forward, as these new arrangements bed in further, there should be a significant fall in turnaround times for the more straightforward tax credits complaints, without this being at the expense of the service we give to other complainants. The TCO plan to integrate

and streamline their procedures for making decisions under COP 26 and handling complaints. Coupled with their work on improving communications to complainants, this should improve significantly their service to claimants in this sensitive and difficult area. We will continue to work with the TCO to help secure these improvements.

**Other complaints about HMRC**

Like last year, there has been little change regarding the other main areas for complaint. These are:

- Tax coding and the application of ESC A19
- Investigations and enquiries
- Assurance work (VAT)



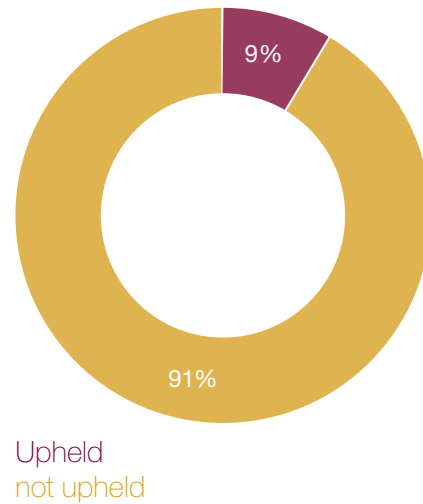
**Simon Oakes, Head of Office**

# The Valuation Office Agency

The number of Valuation Office Agency (VOA) cases that we investigated this year continued to reflect similar year on year patterns. We received 18 cases this year, mainly about Council Tax. We completed 11 investigations during 2006/07, only one of which was upheld in part. We were able to secure an agreed settlement in three cases with the remaining eight being considered by The Adjudicator.

We are seeing a growing trend where complainants feel that they should be compensated for costs incurred whilst making appeals. A good example of this type of case is in the VOA case summary section in Appendix 5.

VOA investigation results

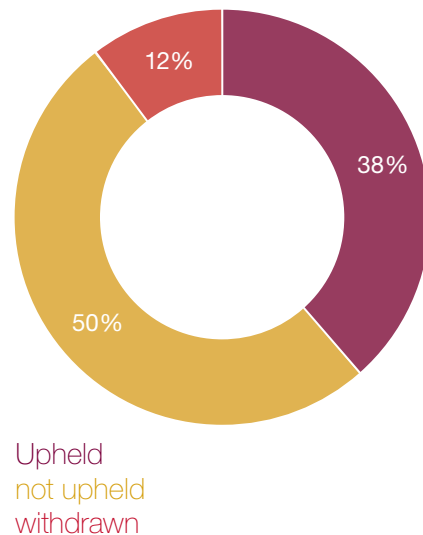


# The Public Guardianship Office

The Public Guardianship Office has maintained the improvement in complaints handling that we reported last year. During this year we have taken up 13 complaints for investigation. We have settled seven investigations compared with 16 last year.

We did not fully uphold any of these cases and the percentage which we have partially upheld has remained almost constant over the two years. In most cases where we upheld any part of the complaint, we found that the complaints themselves had generally been well handled but that problems had arisen through failures in communication between the various caseworking sections of the PGO. We have brought this to the attention of the PGO and we are pleased to see that they have taken such customer service failures very seriously. They have taken positive steps to address the problems and to learn from their mistakes, so as

PGO investigation results



to prevent similar failures arising in future.

The implementation of the Mental Capacity Act 2005, which brings into being the Office of the Public Guardian, was originally intended to come into effect on 1 April 2007 but was put back until 1 October 2007. Their responsibilities will be considerably wider than those of the

PGO, which it will replace, and this change will have far reaching consequences for the organisation and scope of the work done on behalf of customers who are unable to manage their affairs. We are continuing to work closely with staff at the PGO to ensure that the transition is made as smoothly as possible and that the service to customers does not suffer.

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## The Insolvency Service

In terms of the number of complaints we have seen about The Insolvency Service, this year has been another quiet one. We took on 12 new cases for investigation this year and settled 10.

Although we have not seen many complaints about The Insolvency Service, we have continued to have the opportunity to offer them our feedback where appropriate. We

remain impressed by The Insolvency Service's preparedness to consider our feedback, and to implement changes to their working practices where they agree that this would lead to improvement. We think that this represents a positive and constructive attitude towards complaints and the lessons a business can learn from them.



# Appendices

# Appendix 1

## Statistics

### All complaints

In 2006/07, we took on for investigation 2,227 complaints, compared to 1,034 last year, an increase of 115%. We completed 1419

investigations, compared to 926 last year, an increase of 53%.

### Outcome of all complaints

	Upheld (either wholly, or in part)	Not upheld	Withdrawn	Department Reconsidered	Total
2005/2006	399 (43%)	452 (49%)	48 (5%)	27 (3%)	926
2006/2007	644 (45%)	672 (47%)	66 (5%)	37 (3%)	1419

### Assistance cases

In 2006/07, the Assistance team answered 6,509 general enquiry phone calls, compared with 9,533 last year. These calls covered a wide variety of topics, including requests for information about our complaints procedures.

We took on 6,941 complaints as assistance cases this year, compared with 5,614 last year. These are cases where the organisation has not had the opportunity to consider the complaint and we refer it back to the organisation to deal with.

### HM Revenue & Customs

We took on for investigation 2,184 complaints about HMRC this year, compared to 997 last year, an increase of 119%. We completed 1,390 investigations, compared to 883 last year, an increase of 57%.

1,774 of the HMRC complaints we took on for investigation this year were about tax credits, compared to 569 last year, an increase of 212%. We completed 1,033 investigations, compared to 377 last year, an increase of 174%.

### Outcome of all HMRC complaints (including tax credits)

	Upheld (either wholly, or in part)	Not upheld	Withdrawn	Department Reconsidered	Total
2005/2006	387 (44%)	421 (48%)	48 (5%)	27 (3%)	883
2006/2007	640 (46%)	648 (47%)	65 (5%)	37 (3%)	1390

**Outcome of complaints about tax credits only**

	Upheld (either wholly, or in part)	Not upheld	Withdrawn	Department Reconsidered	Total
2005/2006	279 (74%)	44 (11%)	28 (7%)	26 (7%)	377
2006/2007	577 (56%)	376 (36%)	43 (4%)	37 (4%)	1033

**Compensation**

We recommended HMRC pay a total of £96,902 compensation to complainants this year, compared to £100,022 last year.

We recommended that HMRC give up tax and interest amounting to £11,005 and we also recommended that they write off £307,225 in overpaid tax credits. Last year, we recommended that HMRC give up tax and interest amounting to £231,867 and we also

recommended that they write off £138,719 in overpaid tax credits.

HMRC accepted all of the Adjudicator's recommendations.

**The Valuation Office Agency**

We took on for investigation 18 complaints about the VOA this year, compared to 14 last year. We completed 11 investigations, compared to 15 last year.

**Outcome of VOA complaints**

	Upheld (either wholly, or in part)	Not upheld	Withdrawn	Department Reconsidered	Total
2005/2006	1 (7%)	14 (93%)	N/A	N/A	15
2006/2007	1 (9%)	10 (91%)	N/A	N/A	11



### Compensation

This year we recommended the VOA pay a total of £60 compensation to complainants, compared to £75 last year.

The VOA accepted all of the Adjudicator's recommendations.

### The Public Guardianship Office

We took on for investigation 13 complaints about the PGO this year, compared to 12 last year. We completed 8 investigations, compared to 16 last year.

### Outcome of PGO complaints

	Upheld (either wholly, or in part)	Not upheld	Withdrawn	Department Reconsidered	Total
2005/2006	7 (44%)	9 (56%)	N/A	N/A	16
2006/2007	3 (38%)	4 (50%)	1 (12%)	N/A	8

### Compensation

We recommended the PGO pay a total of £463 compensation this year, a decrease of £195 on the previous year.

The PGO accepted all of the Adjudicator's recommendations.

### The Insolvency Service

We took on for investigation 12 complaints about The Insolvency Service this year, compared to 11 last year. We completed 10 investigations, compared to 12 last year.

### Outcome of Insolvency Service complaints

	Upheld (either wholly, or in part)	Not upheld	Withdrawn	Department Reconsidered	Total
2005/2006	4 (33%)	8 (67%)	N/A	N/A	12
2006/2007	N/A	10 (100%)	N/A	N/A	10

### Compensation

We did not recommend that The Insolvency Service pay any compensation this year. Last year we recommended that they pay £935.

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

# Appendix 2

## 2006-2007 Targets and Achievements as at 31st March 2007

### Assistance and Remit work

Description	Target	Achieved
Where written response required, % Assistance response within 10 working days.	95%	98.28%
% of cases where report requested within 5 working days of the decision to investigate.	95%	98.39%

### Investigation work

Description	Target	Achieved
% of investigation cases where complainant and organisation are informed of allocation within 5 working days.	95%	95.07%
% of investigation correspondence dealt with within 15 working days.	95%	98.65%
Average investigation turnaround in weeks.	19.50 weeks	21.25 weeks
% of investigation cases closed within 44 weeks.	99.50%	99.79%
% of complainants satisfied with the way we handle their complaint at investigation level.	70%	68%

# Appendix 3

## Budget

	2005/2006	2006/2007
Staffing	£1,881,029	£1,919,083
Other operating costs	£67,401	£69,392
Capital	£3,310	N/A
Total	£1,951,740	£1,988,475

# Appendix 4

## Case Summaries

### HM Revenue & Customs

#### Tax Credit case summaries

The great majority of the tax credit complaints that we receive continue to be about the TCO's refusal to write off an overpayment.

HMRC's Code of Practice 26 (COP 26) – "What happens if we have paid you too much tax credit?" states that:

"For us to write off an overpayment you must be able to show that the overpayment happened because:

- we made a mistake, and
- it was reasonable for you to think your payments were right.

This means that you must have checked your award notice when you received it."

Both of the above conditions must be met for an overpayment to be written off. Even where the overpayment initially arose from a TCO error, the reasonable belief test in COP 26 makes it

unlikely it will be written off in the great majority of cases we see. The test here is not whether a tax credit claimant believed that their award was correct but, rather, whether it was reasonable for them to believe that the award was correct, based on all the available information.

The following five case summaries relate to cases where, after considering all of the available evidence, we were satisfied that the TCO had applied the criteria set out in COP 26 fairly and reasonably and that there were no grounds for asking the TCO to write off an overpayment. These cases demonstrate the type of tax credit overpayment cases we deal with and how we consider them in light of COP 26, in particular, the reasonable belief test. They also demonstrate that a significant proportion of the tax credit cases we deal with involve some sort of mistake or poor complaints handling on the part of the TCO.

#### TC case summary 1

Mrs A was overpaid by about £1,800 in the 2003/04 tax year and about £200 in the 2004/05 tax year. She complained to us about the TCO's decision to recover these overpayments.

The overpayments had arisen because Mrs A's actual income in each year was significantly higher than the income used by the TCO to calculate Mrs A's entitlement during the year. Mrs A had told the TCO in April 2003 that her

income was £17,000 but when she submitted her 2003/04 Annual Declaration in June 2004, she declared that her actual income for that year was nearly £22,000. Mrs A's 2004/05 award was, in the main, calculated on an income of £19,000, which she advised the TCO of in October 2004. When she submitted her 2004/05 Annual Declaration in June 2005, she declared that her actual income in that year was about £24,000.

**We did not uphold this complaint.**

We told Mrs A that we were satisfied that the overpayments arose as a result of her failure to notify the TCO of all of her increases in income, and not as a result of a mistake on the part of the TCO. Therefore, the conditions

for writing off an overpayment, as set out in COP 26, had not been met. We were also satisfied that the TCO had not made any mistakes regarding their handling of the claim or subsequent complaint.

### TC case summary 2

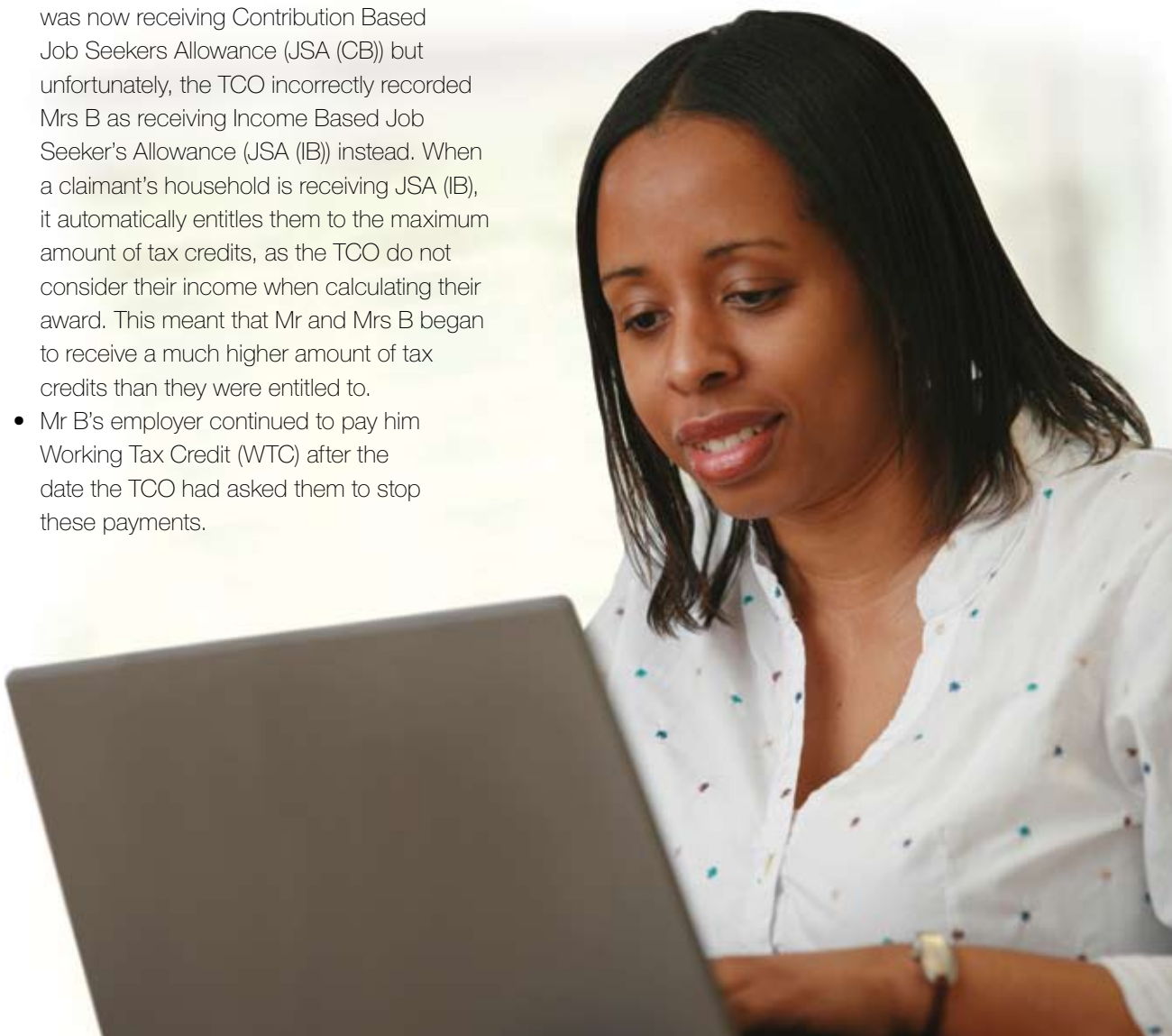
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Mr and Mrs B were overpaid tax credit by about £3,700 in the 2004/05 tax year and about £1,400 in the 2005/06 tax year.

The overpayment in the 2004/05 tax year arose because of two reasons –

- In August 2004, the TCO made a mistake when they amended Mr and Mrs B's award. Mrs B had contacted them to say that she was now receiving Contribution Based Job Seekers Allowance (JSA (CB)) but unfortunately, the TCO incorrectly recorded Mrs B as receiving Income Based Job Seeker's Allowance (JSA (IB)) instead. When a claimant's household is receiving JSA (IB), it automatically entitles them to the maximum amount of tax credits, as the TCO do not consider their income when calculating their award. This meant that Mr and Mrs B began to receive a much higher amount of tax credits than they were entitled to.
- Mr B's employer continued to pay him Working Tax Credit (WTC) after the date the TCO had asked them to stop these payments.

The overpayment in the 2005/06 tax year arose because Mr and Mrs B's actual household income during that year was higher than the income that they had declared earlier in the year.



When Mr and Mrs B disputed their overpayments, the TCO told them that they accepted that the majority of the 2004/05 overpayment had arisen from their mistake but they felt that this mistake would have been apparent from the award notice sent to Mr and Mrs B in August 2004, which would have made it clear that the award was incorrectly based on Mrs B receiving JSA (IB). They, therefore, felt

that it was not reasonable for Mr and Mrs B to have believed their award was correct.

Mr and Mrs B complained to us that they could not have known that their award was incorrect, as they had little knowledge of the benefit system and they did not know that JSA (IB) and JSA (CB) were two separate benefits.

### **We partially upheld this complaint.**

We were satisfied that the only part of the overpayment that had arisen due to a mistake on the part of the TCO resulted from the amendment they made to the award in August 2004 to show incorrectly that Mrs B was receiving JSA (IB).

We accepted that Mr and Mrs B may not have known the exact difference between JSA (IB) and JSA (CB) and also may not have known that, because Mrs B was shown as receiving JSA (IB) on the award, this would result in a higher entitlement to tax credits.

However, we considered that Mrs B was aware of the type of JSA she was receiving, as she correctly advised the TCO that she was receiving JSA (CB). We also felt that it would have been clear that the type of JSA detailed on the subsequent award notice was different to the details Mrs B had previously

given. We felt that it would have been reasonable to expect Mr and Mrs B contact the TCO to query this. In our view, it would have been clear from the award notice Mr and Mrs B received in August 2004 that their award was based on incorrect information. The benefit described on the award notice was not the benefit that Mrs B was receiving. Therefore, we could not conclude that it was reasonable for Mr and Mrs B to believe that their tax credit payments were correct.

Consequently, the conditions for writing off an overpayment, as set out in COP 26, had not been met and we did not ask the TCO to write off any part of the overpayment. However, we did agree with the TCO that it was appropriate to pay Mr and Mrs B a further £175 in compensation, in recognition of the mistakes made and the way their complaint had been handled.

### **TC case summary 3**

Mr and Mrs C were overpaid about £1,400 in the 2003/04 tax year and about £1,200 in the 2004/05 tax year.

When Mr and Mrs C completed their initial tax credit claim form in February 2003, unfortunately, they omitted Mr C's income. In

April 2003, the TCO sent Mr and Mrs C a form to complete this missing information, which they completed promptly. Unfortunately, when the TCO received this document they failed to act on it. Payments were issued based on the incomplete income information from the claim form and an award notice was issued, clearly

showing that the award was based on incorrect information (missing Mr C's income).

Mrs C says that she was aware that the award was incorrect and contacted the TCO on three occasions to rectify this. The TCO only have a record of one of these calls but it is clear that they still failed to act on the information about the correct household income that they were given. The award was eventually corrected in

August 2003 but by this time Mr and Mrs C had been paid more than they were entitled to for that year and their payments stopped.

There was a further overpayment in the 2004/05 tax year, but this did not arise due to a TCO mistake. It arose because Mr and Mrs C's actual household income during the year was significantly higher than the income used to calculate their entitlement during the year.

### **We partially upheld this complaint.**

Although the 2003/04 overpayment did arise due to a mistake on the part of the TCO, it was clear that Mrs C was immediately aware, from the incomplete income information on her award notices, that their award was incorrect. It is also clear that they were aware that the TCO were continually failing to correct the award, despite the information she had provided. Taking this into account, we felt that Mr and Mrs C had failed the reasonable belief

test of COP 26 and that the conditions for writing off an overpayment had not been met.

The TCO had already paid compensation to Mr and Mrs C amounting to £105 for their failure to correct the award and their delay in dealing with the overpayment dispute. As a result of Mr and Mrs C complaining to our office, they agreed to pay a further £80, in recognition of what had happened.

### **TC case summary 4**

Mr and Mrs D were overpaid by approximately £900 in both the 2003/04 and 2004/05 tax years. Mrs D complained about the TCO's refusal to write off these overpayments.

Mr and Mrs D made a claim for tax credits in December 2002. Their award in the 2003/04 tax year was calculated on the basis of Mrs D receiving the Higher Care Component of Disability Living Allowance (DLA HCC). The provisional award for the 2004/05 tax year was also calculated on Mrs D receiving DLA (HCC). Receiving DLA (HCC) entitles the claimant to the severe disability element (SDE) of Working Tax Credit (WTC). Claimants will not be entitled to this element if they are getting the Higher Mobility Component of DLA.

In July 2005, the TCO wrote to Mr and Mrs D, asking them to provide evidence to show that Mrs D satisfied the conditions to receive the severe disability element of WTC. It transpired that Mrs D was receiving the Higher Rate **Mobility** element of DLA. As Mrs D was not receiving the Higher Care Component of DLA, she did not qualify for the severe disability element of WTC. The TCO amended their records accordingly and this meant that Mr and Mrs D had received more money than they were entitled to in the 2003/04 and 2004/05 tax years.

Mrs D said that she believed that the HCC referred to in her award notices was the higher element of the mobility allowance (she believed

it had changed its name). The TCO contacted the Department for Work and Pensions who said that Mrs D would have been told, in her

initial DLA award, that she was receiving the Higher Mobility Component, and subsequent correspondence would have also reflected this.

### **We did not uphold this complaint.**

We did not consider that the overpayment arose due to a mistake on the part of the TCO and we also considered that it was not reasonable for Mr and Mrs D to believe their award was correct when her award notices detailed incorrect information about the benefit

she was getting. Therefore, the conditions for writing off an overpayment, as set out in COP 26, had not been met and we did not ask the TCO to write off the overpayment.

## **TC case summary 5**

Ms E made a claim for tax credits in April 2003 and stated on her claim that her childcare costs were £15 per week. The TCO made an error when they processed the claim and this resulted in Ms E's entitlement being calculated

on the basis of childcare costs of £780 per week. The TCO sent award notices to Ms E in May 2003 and March 2004 detailing how her award had been calculated. These notices would have made it clear that the award was based on incorrect information about Ms E's childcare costs.

In January 2004, the TCO contacted Ms E's child's school in order to verify the childcare costs. The school provided the TCO with the information requested but, unfortunately, the TCO failed to act on this information. This failing was identified as a result of the discussions we had with Ms E during our investigation.

Ms E's 2003/04 award was finalised in September 2004, using the correct childcare costs. This correction to the award meant that Ms E had been overpaid by approx. £4,500. There was also an overpayment in the 2004/05 tax years, as the provisional payments made until September 2004 were also based on the incorrect childcare costs.

The TCO had told Ms E that these overpayments were recoverable. They said that, based on the clearly incorrect information about childcare costs on the two award notices,





Ms E could not have reasonably believed that her award was correct.

In her complaint to this office, Ms E told us that she had not received the two award notices that the TCO had sent. She also said that she had

limited knowledge of the tax credits system, did not know what she was entitled to and trusted the TCO to calculate her award correctly. She maintained that she had no reason to think that her payments were wrong.

### **We partially upheld this complaint.**

We considered what Ms E had said very carefully. We noted that the notes that accompany tax credit claim forms tell claimants that, once the claim form is processed, the TCO will send an award notice to the claimant, advising them how much tax credits they will get and when payments will start. We felt that, if Ms E had not received an award notice, we would have expected her to contact the TCO to query this. We also felt that it was reasonable to expect that someone making a claim for tax credits will, once that claim has been processed, expect to receive some sort of notification from the TCO confirming what they had been awarded and when they will receive payment. We did not consider that a claimant would need to have a detailed knowledge of how the tax credit system works in order to expect this.

Furthermore, we noted that the payments Ms E began to receive were not insignificant and actually amounted to approximately half of her income from employment. We felt that these significant payments had been accepted without question for a period of 16 months, even though Ms E had no information available to her to confirm how they had been calculated or whether they were correct.

After considering all of the circumstances of this case, we decided that it was not reasonable for Ms E to believe that her tax credit payments were correct. As the conditions for writing off an overpayment had not been met, we did not recommend that the overpayment be written off.

Although we felt that the TCO were correct to say that the overpayment was recoverable, we were critical of them for their handling of Ms E's claim and complaint. In particular they –

- processed the claim form incorrectly
- failed to act on correct information provided subsequently about the childcare costs
- delayed in telling Ms E and her MP that the overpayment had arisen due to a mistake on their part
- failed to address the point that Ms E had made about not receiving her award notices
- delayed in sending a report to this office about what had happened.

We agreed with the TCO that Ms E should receive £165 in recognition of the above failings.

It is clear, from our experience of cases, that the reasonable belief test is very stringent and there will be a limited number of cases where we can recommend an overpayment is written

off. However, there are a significant number of cases where we can make a real difference to the outcome, and some of these cases are detailed below.

### TC case summary 6

Mr and Mrs F were overpaid in the 2003/04 and 2004/05 tax years. Overpayment arose from a TCO mistake/system fault when the 2003/04 award was finalised. Mr F's income was omitted from the award calculation, so only Mrs F's income was used to calculate the award. However, both incomes were correctly shown on the subsequent award notices. The mistake resulted in the 2003/04 award increasing significantly (by approx £2,700), the 2004/05 award increased as well and lump sum payments were issued. The TCO had decided to write off the smaller 2004/05

overpayment but had maintained that the 2003/04 overpayment was recoverable.

Mr and Mrs F brought their complaint to our office as they disputed the recovery of the 2003/04 overpayment. They felt that they could not have known that their award was incorrect. The TCO stated in their report to our office that the overpayment was recoverable, as Mr and Mrs F had not questioned why their award had increased significantly or why they had received a large lump sum payment, when their household income had only reduced by a small amount (about £500).

#### **After considering all of the circumstances of this case, we felt that there were grounds for writing off the 2003/04 overpayment.**

We noted that the TCO's award notices ask claimants to check their details to see if they are correct and, if the award notice showed incorrect details, we would almost always say that it was not reasonable for the claimant to think that their award was correct. We thought that it was unfair to expect Mr and Mrs F to have realised that their award was wrong when, in this case, their award notice showed the correct information about their personal circumstances. The wording of the notice also stated that they had been paid too little in the 2003/04 tax year and would shortly receive a payment to cover the extra amount due. We

further noted that award notices do not show claimants how to calculate their awards and claimants have no way of checking that their entitlement shown on the notice is correct.

After discussion with the TCO, they agreed with us that the 2003/04 overpayment should be written off. They also agreed to pay £100 compensation in recognition of the worry and distress caused by their mistakes, £50 for poor complaints handling and £10 for the costs Mr and Mrs F had incurred while pursuing their complaint.

## TC case summary 7

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Mrs G was represented by her local Citizens Advice Bureau (CAB). They complained, on her behalf, that an overpayment of tax credits, paid into an account that she previously held with her ex-partner, had been paid after their separation and after her removal of her name from the account into which it had been paid.

Mr and Mrs G were jointly claiming tax credits. They then separated and Mrs G moved out of the marital home with her children. One week later, she notified the TCO about this change and her new address. She opened a new bank account in her own name and she removed her name from the bank account formerly held with her ex-partner. Although the bank removed her name from the account immediately, they did not change the account to a sole account until three weeks later.

Although the TCO updated Mr and Mrs G's tax credit record, to reflect their household breakdown, they mistakenly excluded Mr G's income from their re-calculation of their joint entitlement up to the date of their separation. This resulted in an incorrect lump sum of tax credits being paid into the nominated bank account formerly held by Mr and Mrs G but now in Mr G's name only.

Award notices, reflecting the changes made, were not sent to Mr and Mrs G until after the end of the tax year, so Mrs G was unaware that the lump sum payment had been made. At the time the payment was made, the bank had not changed the account to a sole account, but her name had been removed from it, so she had no access to this money.

As Mrs G received a payment of tax credits, on her new single award, into her new bank account, she believed that the change that she had notified had been processed and that all was in order. She maintained that she had

no reason to believe that any other tax credit payment had been made.

The law says that where an overpayment is made on a single claim, the person who was awarded tax credits is responsible for repaying that overpayment. Where an overpayment arises on a joint claim, both claimants are jointly and separately responsible for repaying the overpayment. Jointly and separately means that both claimants are legally responsible for repaying the full amount owed.

Once it had been established that tax credits had been overpaid on Mr and Mrs G's joint claim, Debt Management and Banking (DMB), in accordance with the legislative position, applied to both parties for repayment of an overpayment of £4,190.34 tax credits.

As Mrs G had no knowledge of the lump sum paid into her former partner's account shortly after their separation, it came as some surprise to her to be approached subsequently for repayment of the overpaid tax credits.

Mrs G's representatives asked the TCO to reconsider the recovery, taking into account these circumstances. The TCO maintained their stance that, as the account into which the overpayment had been paid was still a joint account at the time of payment, both Mr and Mrs G were responsible for repayment of the excess tax credits paid on their joint account.

Mrs G's representatives complained to us about this.

**On the basis of Mrs G's ignorance of the fact that the overpayment had been made and her inability to access the money, we concluded that it would be unfair to seek recovery of that overpayment.**

We asked the TCO to make representations to their DMB colleagues that in this case recovery should be sought from Mr G only, as he had had sole knowledge of, and access to, the money.

DMB subsequently decided that it was unfair to recover the overpayment from Mrs G and that the overpayment should be recovered from Mr G only.

The TCO had offered to pay Mrs G £50 compensation in recognition of the fact that a mistake on their part had led to the overpayment being made. We asked them to increase their offer to reflect that they could have made representation to DMB sooner. The TCO agreed to increase their offer to £130 and they paid Mrs G a further £10 to cover her direct costs.

### TC case summary 8

Mrs H submitted a single claim for Child Tax Credit (CTC) after she and her husband had split up. This was put into payment in April 2004. In October 2004, Mrs H received a questionnaire from the TCO to find out about the care arrangements for her son.

Unbeknown to Mrs H, her ex-husband had also made a claim for CTC for their son, in May 2004. Where more than one person has claimed for the same child, and it seems there has been no agreement between them who should receive the CTC, the TCO will make the decision. In November 2004, the TCO decided that, as Mr H was responsible for their son three hours more per week than Mrs H, then he should receive the CTC, rather than her. Therefore, they asked Mrs H to repay all the CTC that she had received in the 2004/2005 tax year, amounting to more than £1,300.

Mrs H subsequently disputed the overpayment as she felt it was unfair that she should have to repay it, when she had not known that her ex-husband had also submitted a claim. When the TCO dealt with her dispute, their decision letter told her that the overpayment had arisen for different reasons, namely that she had claimed as a single person but had been living with a partner. Not surprisingly, Mrs H was upset by this, and she considered that her dispute could not have been properly considered.

The TCO later apologised for having given her the incorrect reasons for the overpayment, but told her that they felt it was recoverable, as she had been found not to be the primary carer for her son, and therefore it was not reasonable for her to have considered the payments she received were correct.

**We substantially upheld Mrs H's complaint.**

We found that the TCO had not followed their procedures correctly after Mr H made

his claim, and this led to a significant delay in Mrs H being aware that there might be any

problem with her own claim. Therefore, we recommended that the TCO write off the part of the overpayment which arose during this period (approximately £900), and that they pay some compensation for the worry and distress caused by the way they handled her dispute of the overpayment and her direct

costs, totalling £60.

We also asked the TCO to look at their procedures to resolve disparities with the way that the Child Benefit Office (which is also part of HMRC) deals with similar issues.

### TC case summary 9

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In January 2006, Miss J contacted the TCO Helpline to change her bank account details. Due to a system fault, there was a delay in the details being updated and this meant that two further monthly payments of approximately £500 were issued to the old bank account. Miss J could not access the second payment, as, by this time, this account had exceeded its overdraft limit. Miss J contacted the TCO to complain about the delay in updating her bank details and she also asked for the second payment to be replaced. The TCO advised Miss J that this payment would not be replaced, as it was issued to an account that was still open.

Miss J was not happy with the responses she received from the TCO and brought her complaint to this office. She felt the TCO Helpline had given her misinformation about the missing payment (some advisers had promised her that the "missing" payment would be re-issued to her new account). She also felt that there had been long delays in the TCO dealing with her complaint.



**We obtained recordings of all the Helpline calls that we considered relevant to Miss J's complaint. We agreed with the TCO that this payment could not be classed as "missing" and, therefore, could not be re-issued.**

After listening to Miss J's calls to the Helpline, we decided that the level of service provided by the Helpline had been very poor. In three calls, advisers and a team leader had given Miss J incorrect information about the payment that had gone into the wrong account. At least two of these advisers had told Miss J that the payment would be reissued. One call was escalated to a team leader but he also provided incorrect information and gave a clear impression that the missing payment would be replaced without any further delay.

We discussed the content of these calls with the TCO and they agreed with our concerns about the service the Helpline had provided. In addition, the TCO accepted that there had been delays in dealing with Miss J's complaint. We agreed with the TCO that they should pay Miss J a total of £141 compensation in recognition of these failings and the costs that she had incurred. We discussed the above issues with Miss J and she was happy to resolve her complaint on this basis.

## Other HMRC case summaries

### ESC A19

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 HMRC to give up an unexpected tax liability under the terms of Extra Statutory Concession A19 (ESC A19).

Under the provisions of ESC A19, HMRC 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 HMRC 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 HMRC:

- failed more than once to make proper use of the facts they were given about a single source of income, and
- 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 could reasonably have believed that their tax affairs were in order. This difficult test is often the deciding factor in determining whether or not HMRC have applied their discretion fairly and properly.

It is important to remember that the test is not a question of whether a taxpayer actually believed that their affairs were in order, but whether it

was reasonable for them to hold this belief when all relevant factors are taken into consideration.

In considering such complaints, we are looking to see whether HMRC have applied the test in accordance with their guidance.

This year, we again investigated a number of complaints from retired tax payers with more than one source of income. The following case summary is an example of one of these cases.

### ESC A19 case summary

Mr K complained about HMRC's refusal to waive underpayments of tax which arose in the 2004/2005 and 2005/2006 tax years.

When Mr K retired, he told HMRC that he would be receiving a number of pensions. They sent him a tax code which seemed to take into account all of the information Mr K had supplied. However, HMRC did not issue tax codes to his two smaller pension providers, which meant that no tax was deducted from them.

HMRC had decided ESC A19 did not apply because they felt the "time test" was not met. They decided this on the basis that Mr K was notified of the underpayment for the 2004/2005 tax year within 12 months of the end of the tax year in which they received information showing that more tax was due. They considered that Mr K's 2004/2005 Self Assessment tax return was the time at which they received the relevant information.

**When we reviewed the case, we felt the time test was met because HMRC's failure to act on the information Mr K provided at the relevant time led directly to the underpayment in the 2004/2005 tax year.**

We also considered it was reasonable for Mr K to have thought his tax affairs were in order, considering the tax code HMRC sent him showed all his pension providers and estimated income.

We did not consider the same argument could apply to the underpayment for the 2005/2006 tax year, as it was notified to Mr K "in year".

We asked HMRC to reconsider their decision. When they looked at things again, they

accepted our argument about the time test. However, they realised on reviewing things for a second time that they had failed to take into account that there may have been a PAYE failure by the pension providers, which might have led to the shortfall being recovered from them. As they had not explored this, they considered there was now no basis on which to ask Mr K to pay the underpaid tax, and they agreed to waive both years (amounting to about £1,600 in total), and to pay some compensation for poor complaint handling.

## Value Added Tax (VAT)

### VAT case summary

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L Ltd applied to join the VAT Flat Rate Scheme eighteen months after they had registered for VAT. They asked to be allowed to use the scheme with effect from the date of their VAT registration. They complained that HMRC had not provided any information about the Scheme in the "VATpack" that they had sent when the company first registered for VAT, or on two further occasions when VAT staff contacted the company.

HMRC first considered whether they had failed to provide information to the company.

Although the VAT Guide, which they sent as part of their VATpack, had not yet been updated to include reference to the Scheme, they had included information about it in the VAT Notes leaflet that went out to all VAT registrations, including L Ltd. L Ltd would have received editions of VAT Notes that included articles on the Scheme with their VAT returns for the February and May 2004 quarters. We agreed with HMRC that this was satisfactory notification of the Scheme.

A VAT assurance officer contacted L Ltd during their first year of registration to offer educational support. The company said that the officer had not mentioned the scheme, or that, if she had done so, the coverage of it must have been very brief, given the duration of the call and the ground it had covered, and that the coverage had not been effective. The officer's notes of the telephone call recorded that she had spoken about the scheme. We accepted that the officer had mentioned the scheme. We could see that the call had only lasted a few minutes and had covered a good range of topics, and we could also understand HMRC's view, that the officer would have been guided by the company's initial response in judging what

depth of information was required. We could not know just how the conversation had gone, and so were not in a position to say that the officer's coverage of the topic, or lack of it, amounted to a mistake under HMRC's Code of Practice on complaints.

A VAT assurance officer later visited the company but did not mention the Scheme. HMRC readily accepted that best practice would have been for the officer to cover the Scheme with the company, but they did not accept that failure to do so amounted to a mistake. We reviewed HMRC's leaflet, Visits by Customs and Excise officers, and decided that failure to mention the scheme did not put HMRC in breach of any commitment given in the leaflet.

HMRC have a discretion to allow retrospection, but refused to exercise it in L Ltd's favour. Their guidance to their staff included a general statement that discretion to allow backdating should normally be exercised in the applicant's favour to encourage take up of the Scheme, and could be for any VAT accounting period, after the inception of the Scheme, for which no return had been rendered. Further guidance specified that a Scheme starting date earlier than the start of the first period for which no return had been rendered should not be granted, unless there were exceptional circumstances. In HMRC's view, a mistake on their part would be an exceptional circumstance, but, since they had decided that they had made no mistake in L Ltd's case, they could see no reason to allow retrospection.

At the time that L Ltd applied to join the VAT Flat Rate Scheme they had already submitted returns for several tax periods, but a return was outstanding for a further tax period. We thought



that HMRC should have considered allowing backdating to cover this period only, but they had not done so. HMRC accepted this, but said that, had they considered it, they would have refused it because of further guidance that had become available by the time of L Ltd's application. We reviewed the guidance, and established that the guidance in place at

the time of L Ltd's application said that, only in exceptional circumstances would they agree to a start date that fell into a tax period for which the return due date had already passed. On this basis, we could see that it would have been reasonable for HMRC to refuse retrospection for the period for which L Ltd had not yet submitted a return.

**We were concerned that HMRC's staff dealing with applications to join the VAT Flat Rate Scheme should think about each tax period separately when they considered requests for retrospection, and we asked them whether a reminder to staff would be helpful.**

We were also concerned about apparently contradictory elements in HMRC's guidance. They had acknowledged that the guidance was not entirely clear, and that they intended to review it, so we asked them to let us know the outcome of their review.

We were also concerned that the clear guidance on retrospection available to

businesses applying to join the VAT Flat Rate Scheme electronically was not also available to other applicants. We asked HMRC to consider whether the guidance in their Notice on the Scheme might, with benefit, be expanded.

## Customs duty

### Custom duty case summary

M Ltd runs an import business. The company accumulated more than £100,000 in arrears of anti-dumping duty because they had assigned an incorrect customs commodity code to one product line, and so had not declared or paid any duty at import. They complained that, during an assurance visit, the visiting officer had confirmed the correctness of the commodity code that they were using, and they asked for the duty to be remitted on grounds of the officer's misdirection.

HMRC could not consider a complaint of misdirection, because their Extra-statutory Concession on misdirection only applies to the VAT regime. As they explained to the

company, customs duties are different to other indirect taxes, in that they are EU rather than UK revenue, and are administered under direct EU law; remission of duty can only be obtained through the VAT and Duties Tribunal and on specific grounds. For these purposes, it is not sufficient to show that HMRC have made a mistake; it must also be shown that the mistake was not reasonably detectable.

Nevertheless, HMRC agreed to examine the circumstances of the case to see whether they had made any mistake under their Code of Practice on complaints for which they should offer redress. This could not result in remission of the duty, but if HMRC were to find that

they had made a mistake that had caused a financial loss to the company, and that the company's actions had been reasonable in all the circumstances, they might be in a position to consider offering compensation for the loss.\*

A Customs and International Trade assurance officer had visited the company some years before the incorrect allocation of the customs commodity code came to light. The officer had selected a small number of customs import documents for examination during the visit, and these included one for goods of the type in question. The company claimed that the officer had confirmed to the company's accountant that the customs commodity code in use was correct, but the officer said that this was not the case. There was no independent evidence available to us to corroborate either account, so, on grounds of natural justice, we were not able to determine which was correct. Accordingly, we could not find that the officer had actively misled the company.

We also considered whether the officer might have misled the company in failing to bring their mistake to their attention. The stated overall

purpose of the visit, set out in a letter before the visit, had been to confirm that the correct amount of customs duty and VAT had been secured at import. The company told us that, because of this, and in the absence of warnings to the contrary, they assumed after the visit that they were using the correct commodity codes for their goods. But HMRC pointed out that their pre-visit letter had told the company that the visit was to be an audit of the systems used by the company to manage their customs imports, and that their intention was to document the system and to evaluate any risks that it might present to accurate accounting for customs import duties. It was not an exhaustive examination of individual import transactions. They pointed out, furthermore, that it was the company's responsibility to make correct declarations, and that this responsibility could not be transferred to HMRC on grounds of a necessarily limited audit. They had asked to see a small number of import documents, but this had been to check that the company's import system operated in the way that had been described to them, rather than to confirm definitively the customs commodity codes used.

**We found no evidence that the officer had identified that the commodity code in use was incorrect and had failed to do anything to correct it; nor did we find that importations of the goods in question were so central to the company's business and the commodity code assigned so obviously wrong, that failure to detect the error might have amounted to a mistake on those grounds.**

We were concerned that the officer had not confirmed the material issues arising from the assurance work to the company in writing after the visit, but were encouraged to see that, since the time of the visit, firm guidance on this has been published to staff.

We asked HMRC to consider whether it would be helpful to businesses if the letters sent to them before assurance visits were to

include the advice that HMRC's assurance checks should not be relied on as a confirmation that a business was declaring customs duties correctly just because no errors had been found. This practice had been adopted within the VAT regime, and we thought it could, with benefit, be used in other indirect tax regimes.

HMRC subsequently advised us that they

recognised our concerns and have now amended these letters accordingly.

\*This would be subject to confirmation by the EU Commission, still awaited in another case

upheld by the Adjudicator more than two years ago, that compensation would not be contrary to EU law, or be regarded as State Aid.

## Detection

### Detection case summary

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This case concerns the interception and search of Mrs N on her arrival in the UK. She was stopped by Customs shortly after disembarking, and long before the normal controlled area. She was subjected to a “rub down” search of her person before being permitted to continue. Mrs N complained about the treatment she received from the officers who dealt with her.

HMRC explained to us the justification for operating in such an advanced position, which we could not fully understand. However, the area where Mrs N was stopped was a corridor, and there are no facilities available, such as benches or private rooms. Mrs N's bag was searched on the floor, and the “search of person” was conducted in a stairwell.



**We concluded that the reasons for the search were either not properly explained to Mrs N or that she misunderstood them. We felt that this was unacceptable, as Mrs N should have been made aware of the reasons for the proposed search before it took place. HMRC agreed to apologise for this mistake and make a payment of £250 in recognition of the worry and distress this had caused.**

Any search needs to be fully recorded in officers' notebooks, including the reasons for the search, the authority given and that the rights of appeal have been fully explained. In this case, only one brief notebook entry was

made. We expressed serious concerns to HMRC about this poor record keeping. They fully accepted and shared our concerns and agreed to address these issues as a priority.

## Child Benefit Office

### Child benefit case summary

Mr P complained about HMRC's exercise of discretion in relation to a rival claim for child benefit.

Mr P was in receipt of child benefit for both of his children until June 2004. At that point, the children's mother, Ms Q, also made a claim. When this happens, and agreement cannot be reached between the parties, HMRC have to make a decision as to who should be awarded the benefit. After making enquiries of both parties, conflicting information was given about many aspects of the children's care,

but it seemed there was no dispute that the children resided with Mr P on four nights a week, and with Ms Q on three nights a week. HMRC decided, on the basis of the information available, to grant the benefit for the older child to Ms Q, and for the younger child to Mr P.

Since the original decision was made, Mr P had been in regular contact with the CBO, to express his dissatisfaction at the outcome. As a result, the decision had been reconsidered three times, but remained the same.

**When we investigated Mr P's complaint, we did not consider that HMRC's decisions had been unreasonable. However, we were concerned that the route available for Mr P to have challenged the reasonableness of these decisions had not been made clear to him at an early stage.**

it was clear that Mr P was challenging the basis on which the decisions had been reached. It seemed to us that the CBO may not have been fully aware of the role of the Adjudicator's Office in considering discretionary decisions. We asked the CBO to consider adapting their complaint handling

procedures accordingly. After considering our comments, the CBO have reconsidered the way they will handle similar cases in future, in order to ensure that claimants will be clearly able to avail themselves of the opportunity for an independent review.

## Valuation Office Agency

### VOA case summary

In this case, the VOA published out of date information on their website concerning when a rating assessment for company R had been amended. The VOA acknowledged that they had published incorrect information, and that, as a consequence of this, the company R submitted an appeal against the rating assessment believing that the appeal was still within the time limits allowed.

Agreement was reached that the assessment should be reduced. However, when the reduction was being processed it was realised that the appeal was in fact out of time to challenge the original entry because the alteration, which had been appealed against, had in fact taken place on 30 March 2003 and not 20 February 2004. Any subsequent

reduction could only be effective from 1 April 2003, the start of the rate year in which the appeal was actually made. This had no real benefit to the company because this particular type of assessment is reviewed annually. The assessment effective during 2003 would be reviewed as a matter of course, and the complainant had made a separate appeal against that particular assessment which was subsequently reduced, therefore, there was no loss to the ratepayer. Company R felt that they should be reimbursed for their time and effort and claimed in excess of £1000 to cover site visits, and travel to discuss the appeal and incidental costs. The VOA considered the claim under their code of practice *"Putting things right for you"*.

**We agreed with the VOA that the ratepayer (the company) was responsible for meeting its own costs of making an appeal, negotiations with the VOA, and the costs of preparing for and attending any Valuation Tribunal hearing.**

If the VOA makes a mistake or causes an unreasonable delay then the code of practice allows for reimbursement of additional direct costs, which are over and above the normal costs of dealing with them. No payment for loss of time is allowed under the code of practice and no hypothetical costs can

be considered; they must be actual. As the complainant was an employee of the company, there were no additional costs. There is no doubt that the VOA had made a mistake and by bringing the complaint to the Adjudicator's Office this highlighted the poor service which they had provided.

## The Public Guardianship Office

The 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, whom

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.

Following the Mental Capacity Act 2005, it was announced that the PGO would cease to

exist in April 2007 and would be replaced by the Office of the Public Guardian (OPG). This change has now been postponed to October 2007. We will continue to work with the new organisation to add value to their complaint handling process.

The following case summary illustrates the sorts of issues that are typical in our investigation of complaints about the PGO.

### PGO case summary

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Mr S, the son of Mrs S, the patient, complained he had not been consulted about the appointment of the PGO as his mother's Receiver. He complained that the PGO had failed to insure her property for two years, while she was in a nursing home, and had allowed

the interest on her mortgage to accrue. He also complained that he had not been informed beforehand of the fees that the PGO would charge and asked for them to be waived because of their poor service.

#### **We partially upheld this complaint.**

We found that the PGO had been asked by the Local Authority Social Services department to assume the responsibility of managing Mrs S' financial affairs and that it was the Social Services' responsibility to advise the next of kin of the application to appoint a Receiver. We did not uphold this part of the complaint.

Our investigation showed that the property insurance cover may have lapsed in July 2001, shortly after the PGO were appointed as Receiver, though it was not possible to confirm this because of the lack of proper documentation. However, the PGO's own case reviews in 2002 and 2003 noted that the insurance premiums were not paid in these years and highlighted the urgent need to put adequate insurance cover in place.

Although the PGO considered that insurance was in place for part of the period, there was no evidence to support this. We criticised the PGO for their failure to keep adequate records and to ensure that effective action was taken to insure the property. We asked them to apologise to Mr S, but we did not recommend payment of compensation as we did not find that there had been a claimable event during this period resulting in a financial loss to the estate.

We saw that there was correspondence from the Benefits Agency and the mortgage lender showing that the payment of mortgage interest had ceased in 2001, but the PGO continued to believe that it was being paid and the annual case reviews did not pick up this error. We asked the PGO to pay Mr S

£150 to compensate for the additional interest that we estimated had accrued on the capital in this period.

We saw that the PGO had advised Mr S about their fees. These are statutory and cannot be waived except in very exceptional circumstances. We were satisfied that these

circumstances did not apply in this case and did not uphold this part of the complaint.

We asked the Chief Executive of the PGO to write to Mr S to apologise for the PGO's mistakes and to pay him £250 to compensate for the worry and distress these had caused, in addition to the £150 mentioned above.

## The Insolvency Service

### The role of The Insolvency Service

The Insolvency Service, an Executive Agency of the Department of Trade and Industry, deals with insolvency matters in England and Wales, and some limited insolvency matters in Scotland. Through its network of Official Receivers, and various headquarters divisions, The Insolvency Service is responsible, amongst other things, for 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; and reporting any misconduct on the part of directors or bankrupts. It also deals 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.

From 1 April 2006, The Insolvency Service became responsible for Companies Investigation Branch (CIB), an area of work previously under the jurisdiction of the

Department of Trade and Industry. The CIB investigate complaints about the conduct of "live" limited companies and Limited Liability Partnerships, which have a business address in Great Britain, and when such an investigation is in the public interest.

### Complaints about The Insolvency Service

Official Receivers are statutory office holders, and as such they find themselves directly accountable to the courts for a considerable proportion 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 an issue 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 which do not have their resolution through the courts. Only the court can reverse or modify a decision about the administration of an insolvent estate.

In our overview, we praised the Service's positive and constructive attitude towards complaints and the lessons a business can learn from them.

A good example of this was a case in which we considered the status of The Insolvency

Service's Technical Manual. The question was whether the Manual is prescriptive in nature, such that officials should carry out the administration of every case exactly as recommended, or whether it exists more to provide guidance to officials as to good practice.

Following discussions with us, we were pleased that The Insolvency Service looked again at their guidance. They made amendments, and issued supporting guidance, to make it clear that, while the Official Receiver may, with good reason, exercise discretion in some cases and decide not to follow the guidance in the Technical Manual, any departure must come about by design and not by default and, where it occurs, the reason for the departure must be recorded to enable an audit trail to be established.

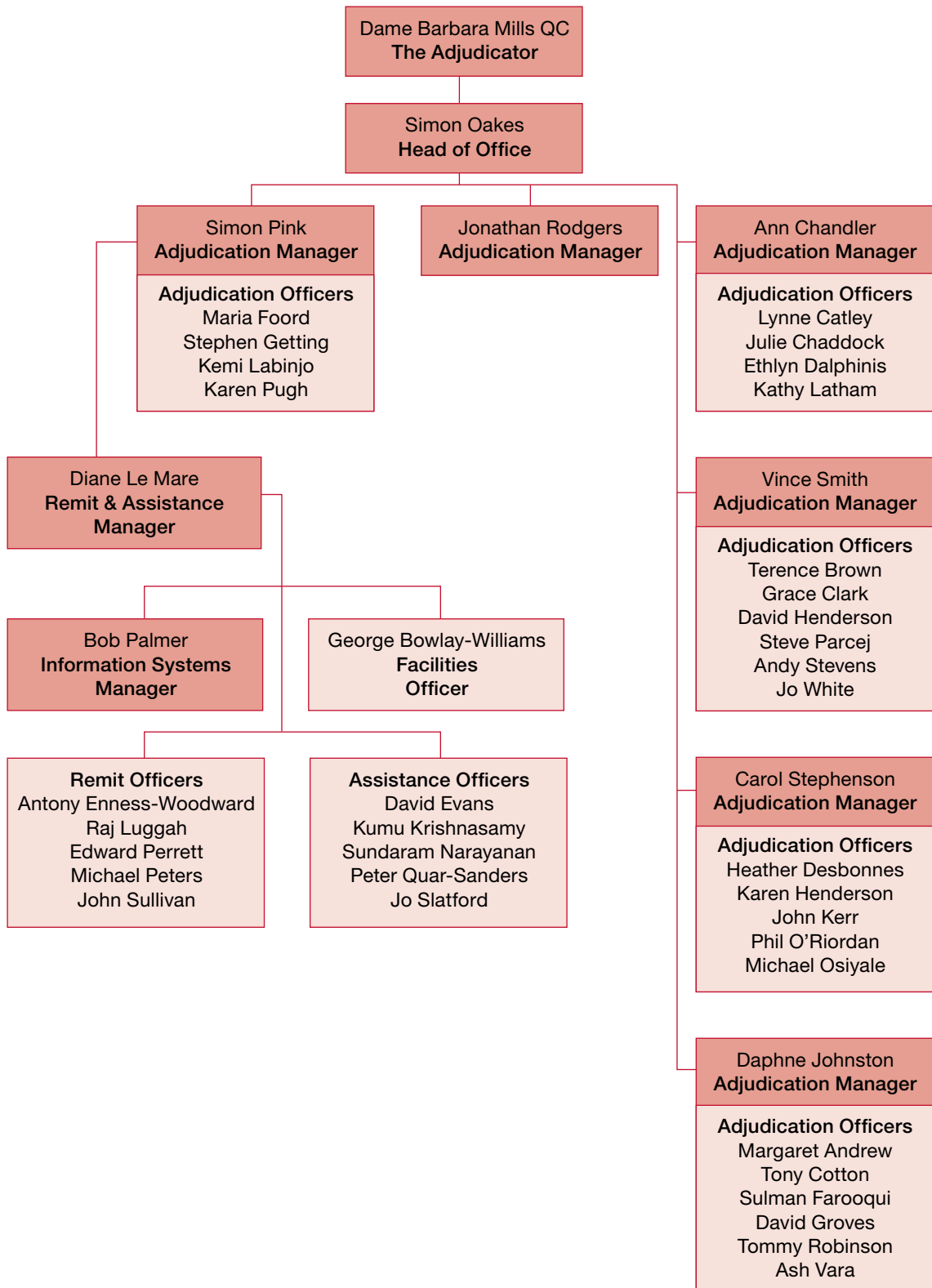
Such a procedure should prove helpful to those who need to consider the reasonableness of a decision some considerable time after the event.





# Appendix 5

## Staff chart (as of 31 March 2007)



# Appendix 6

## Contact details

The Adjudicator's Office  
Haymarket House  
28 Haymarket  
London  
SW1Y 4SP

(Note: We will be moving from Haymarket House in early 2008. We will publicise our new contact details in our leaflets and on our website when we know the exact date of our move.)

Telephone **020 7930 2292** (typetalk facilities are available)

Fax **020 7930 2298**

E-mail **adjudicators@gtnet.gov.uk**

Website **www.adjudicatorsoffice.gov.uk**

# Appendix 7

## Publications

### Leaflets



- AO1 – The Adjudicator's Office for complaints about HM Revenue & Customs and the Valuation Office Agency
- AO5 – The Adjudicator's Office for complaints about the Public Guardianship Office
- AO6 – The Adjudicator's Office for complaints about The Insolvency Service

Our AO1 leaflet was revised in December 2006 and we will be revising and reviewing all our other leaflets over the next few months.

### Annual Reports



2006/07



2005/06



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