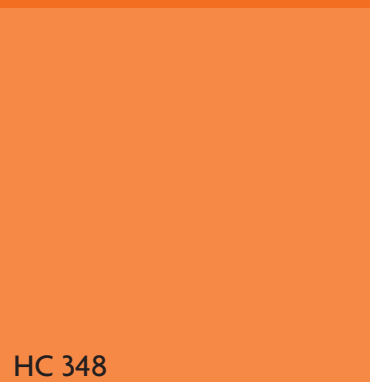
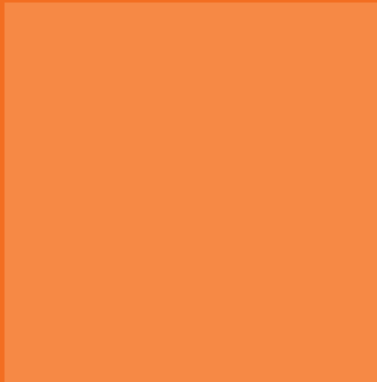
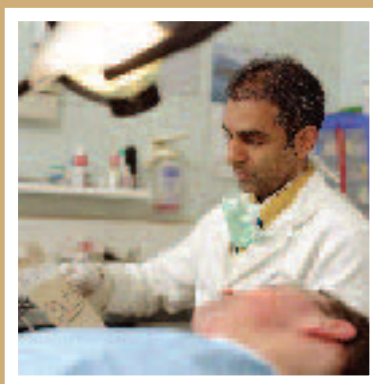


Annual Report 2004-05

# A year of progress





# What we do

We deliver a high quality complaints handling service to all who need it

Our aim is to put things right where we can and share the lessons learned to improve public services

## Our role

We provide a service to the public by undertaking independent investigations into complaints that government departments, a range of other public bodies in the UK, and the NHS in England, have not acted properly or fairly or have provided a poor service.

## Our vision

We aim to:

- make our service available to all who need it;
- operate open, transparent, fair, customer-focused processes;
- understand complaints and investigate them thoroughly, quickly and impartially, and secure appropriate outcomes *and*
- share learning to promote improvement in public services.

## Our values

Our values underpin everything we do:

### Excellence

We pursue excellence in all that we do in order to provide the best possible service.

### Leadership

We lead by example and believe our work should have a positive impact.

### Integrity

We are open, honest and straightforward in all our dealings, and use time, money and resources effectively.

### Diversity

We value people and their diversity and strive to be inclusive.

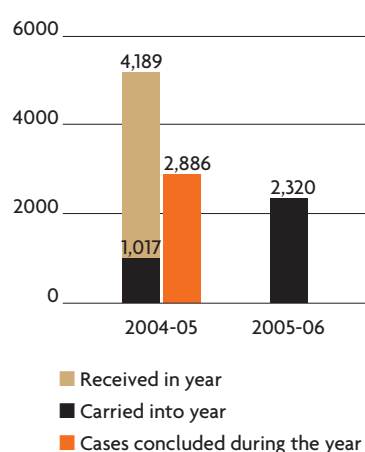
Open up for facts and figures about our work



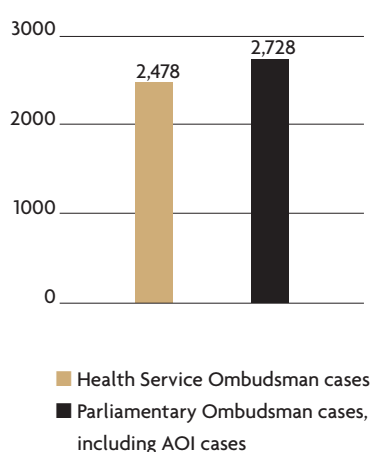
# The year at a glance

This has been a challenging year as we have seen a substantial increase in the number of complaints. This year we accepted 4,189 new cases for investigation, a rise of 988 (30%) on 2003-04.<sup>1</sup> Including the 1,017 cases in progress carried over from last year, our total workload for 2004-05 was 5,206 cases. Figure 1 below shows the volume of casework in 2004-05 and work in hand carried over into 2005-06.

**Figure 1**  
**Workload – cases carried into year, new cases accepted for investigation and cases concluded**



**Figure 2**  
**Workload – by jurisdiction 2004-05<sup>a</sup>**



<sup>a</sup> Figures include cases carried over from 2003-04.

Although we concluded 2,886 cases this year, the rise in the number of new cases accepted for investigation meant that we began 2005-06 with 2,320 cases in hand. This presents a major challenge and we have put in place a number of measures – outlined in the ‘Working differently’ chapter – to help us respond to it.

## Managing our resources

Our budget for 2004-05 was £20.1 million.<sup>2</sup> We are committed to using our resources effectively and efficiently and to securing value for money through prudent administration and through sound and appropriate financial controls and governance arrangements and, at the same time, being able to respond to changes in demand for our services. In allocating budgets across the Office our aim has been to ensure that resources are deployed to ensure that our key business objectives are achieved.

Specifically we have:

- operated within our budget and within the financial limits agreed with the Treasury
- closely monitored the use of our resources and considered the resource implications of changes to our workloads over the year
- identified financial pressures and managed effectively risks to achieving our business objectives – through reallocation and utilisation of contingency arrangements where necessary and by discussing with the Treasury at an early stage any major new demands requiring additional resources

- ensured that we have made soundly-based decisions on cost-effective investment in new technology, systems and infrastructure which support improved customer-service in the future.

Our funding is currently provided on an annual basis, but discussions are underway with the Treasury to agree a three-year settlement process which would align our resource funding with our strategic plan. This also includes discussion on our capital investment strategy and its funding implications.

<sup>1</sup> During 2004-05 we changed the way in which we categorise and record our investigations (see page 38 for an explanation of this change). Figures presented in this year’s *Report* reflect this new way of recording our workload and mean that the statistics are not readily comparable with previous annual reports.

<sup>2</sup> Detailed information is available in the Office’s *Resource Accounts 2004-05*, available from TSO.

## Implementing change, maintaining standards

This has been a year of significant change for the Office. We undertook extensive stakeholder research and used the results to draw up a new role and purpose statement which sets out what we do, our vision and values (see page facing the title page).

We then used our role and purpose statement to re-engineer our approach to complaints handling, with the support of a specialist change partner, Ashridge Consulting. Throughout the year we encouraged teams to experiment with new, tailored and more customer-focused ways of working. We believe that the new approach – implemented from 1 April 2005 – will achieve significant improvements for both complainants and bodies complained about.

To make our targets easier to understand, and our performance easier to measure and assess, we have introduced a set of simple, clear operational targets based on the length of time it takes for a case to be completed – measured from the time we receive the complaint until we reach a decision.

At the start of the year we recognised that if we were to engage staff fully in the change programme, we should

expect to complete between 5-10% less complaints. We exceeded our target by reaching decisions on 2,886 cases compared with 2,895 in 2003-04.

During 2004-05 we reached a decision on 94.9% of Parliamentary cases within 12 months (against a target of 95%) and exceeded our target for Health Service complaints – reaching a decision for 86.8% of cases (target 80%). We met all our service standards with the exception of our aim of completing 80% of Parliamentary complaints within three months. This was due to a significant increase in the number of complaints

received and we have implemented a range of measures to respond to this situation (see page 40).

In addition to our work on complaints we dealt with 11,689 enquiries and requests for information within our target response times. Enquiries include complaints which we cannot investigate because they are not within our jurisdiction or are premature, for example because they have not been referred by a Member of Parliament or have not been considered locally under the NHS complaints system.

Figure 3

### Service performance - time taken to process enquiries<sup>a</sup>

	Target	Result
Deal with general enquiries, by post or email	Within 5 days	100% achieved
Acknowledge all other correspondence	Within 2 working days	100% achieved
Decide whether we can investigate	Within 10 working days	100% achieved
Acknowledge complaints about our own service	Within 2 working days	100% achieved

Figure 4

### Service performance - time to decision<sup>a</sup>

	Target	Result
Complaints to the Parliamentary Ombudsman	0-3 months 80%	61.7%
	0-6 months 85%	86.1%
	0-12 months 95%	<b>94.9%</b>
Complaints to the Health Service Ombudsman	0-3 months 30%	30.3%
	0-6 months 60%	62.3%
	0-12 months 80%	<b>86.8%</b>

<sup>a</sup> Performance targets published in the 2004 *Business Plan*.

## Learning from complaints

We are committed to sharing the learning from complaints to help improve public services. While all the complaints we handle are very important to the individuals concerned, some cases also highlight recurring themes and systemic problems, which have broader implications for service policy or delivery.

We monitor any trends in cases to identify particular shortcomings in the way departments deal with the public, and share good practice with service providers to help them ensure that mistakes are not repeated.

In a new initiative for this Office, we worked with patients and with the Society of Cardiothoracic Surgeons of Great Britain and Ireland and a range of key healthcare bodies to produce a guide to help surgeons and their teams to communicate the risks of surgery more effectively to patients.

We also published a number of special reports to Parliament highlighting problems and making recommendations. Key reports published in 2004-05 covered major problems with the consistent application of Department of Health policy on continuing care; and issues arising from the delay in introducing a new patient-focused NHS complaints system. In June 2005 we published a special report detailing concerns about the administration of the Child and Working Tax Credits system.

# Annual Report 2004-05

Session 2005-06

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## Complaints **matter...**

...for people who have not been treated properly or fairly, and for those who deliver public services.



Ann Abraham  
Parliamentary Ombudsman  
Health Service Ombudsman for England

Resolving a complaint can make an enormous difference. Public services have a major impact on people's lives, and when things go wrong the consequences can be serious. Equally, making a complaint can be a stressful experience, and if someone's complaint is not handled with care, respect and diligence this adds insult to injury. Having accessible, fair, open and easy to understand complaints handling systems is not an optional extra but should be a fundamental component of service delivery.

I know from my experience that the investigation of complaints enables public bodies to learn from their mistakes. The knowledge acquired by my Office enables me to press providers of services to improve the implementation of their policies and practices, reminding them in practical ways that good administration has to be a cornerstone of their work. As my report to Parliament shows, this year has seen some very positive examples of active and constructive dialogue with a range of public service providers, which will make a practical difference to many people's lives.

Public service providers themselves are increasingly recognising the role of complaints in improving the quality of service. However, I have found that there are still some worrying gaps between rhetoric and the reality on the ground. All too often, service providers react defensively to complaints, instead



of treating them as opportunities to learn and to improve their service. Strong leadership and culture change are essential if we are to alter behaviour and improve the experience of complainants.

My work on continuing care for people with long-term care needs illustrates the value that can be added for the public when providers learn from complaints. Between the publication of my first special report on the subject in February 2003 and the second special report in December 2004, my Office received almost 4,000 continuing care complaints. They showed in stark terms the personal hardship caused by shortcomings and inconsistencies in the process by which funding for care was obtained. Throughout the period we continued to press for a national framework for funding based on the application of a single set of criteria. I am delighted that the Department of Health have now decided to develop a national framework for the assessment for fully funded NHS continuing care.

Sadly, however, I still have complaints from over 660 people about the way their funding has been handled, and I am working closely with the Department of Health and strategic health authorities which are committed to providing a robust and transparent assessment of these cases.

I also welcome the acceptance by the Department of Health of many of the recommendations in my report on the NHS complaints system. We are in full agreement about the need for a truly patient-focused complaints system, and there is now an opportunity to make this vision a reality for the benefit of patients and complainants. I am committed to working with the Department of Health, the Healthcare Commission

and others to achieve this goal, and will be tenacious in ensuring that this opportunity does not, like some others before, slip away.

I noted in my 2003-04 *Annual Report* that the introduction of the new Child and Working Tax Credits system had been marred by significant technical problems which had led first to delays in payments, and then created other problems when the Revenue tried to remedy the situation. Despite assurances from HM Revenue and Customs at the end of 2004, we received 216 complaints about the Child and Working Tax Credits system – almost a tenth of all cases referred to me as Parliamentary Ombudsman. I remained concerned that the system still was not working – particularly in relation to overpayments – and that a significant number of families, many on low incomes, were being caused considerable distress.

In my special report to Parliament *Tax credits: putting things right*, published in June 2005, I put forward 12 recommendations to improve the operation of the system and suggested that consideration be given to writing off all excess and overpayments caused by official error in the first two years of the system. I am keen to work with HM Revenue and Customs to address the issues raised in my report to ensure fewer people are caused distress and hardship over the coming year.

As I and my predecessors have regularly pointed out, redress is an essential element of effective complaints resolution. Some public service providers accept this principle, although even amongst those, there are differences in the approach to, and delivery of, redress to the individual. But other public service providers appear to take a different view, and are less inclined

to accept the principle of putting the individual back in the position they would have been in had the mistake not occurred. The proposed NHS Redress Bill provides an opportunity for constructive developments in this area.

I have had more contact with Parliamentary Select Committees this year, and in particular with the Public Administration and Health Committees. I have found that contact invaluable, providing a proper arena for raising systemic issues affecting the public service providers over which I have jurisdiction. I look forward to continuing with, and building on, this engagement in the future.

We have achieved a lot this year. I believe that our growing success has been aided by the significant changes we have made to improve our own effectiveness. We have established new ways of working which have brought a stronger customer focus, an improved approach to complaints and more effective shared learning across the organisation. I thank my staff for responding positively to the changes we have introduced and for maintaining such a high standard of work. A priority for the coming year is to ensure that our service is accessible to everyone who needs it, regardless of background, and for our staff to have the skills and knowledge to make sure this happens. We will work to make sure that our own service is of the highest quality, and that people know who we are, what we can do for them and how they can find us.

Ann Abraham  
Parliamentary and Health Service  
Ombudsman





# The world **in which we operate**

The environment for public services continues to change rapidly, and the work of the Ombudsman is influenced by those changes.

## **Rising public expectations**

The public's expectations of the quality of public services are higher than they have ever been. Governments have been major players in promoting better delivery and more customer-focused services.

The Government's programme of public service reform has brought a range of challenges for providers. The emphasis on putting the needs of patients and customers first has had a major effect on the way services operate. Expectations have been driven up, in part, by the national standards and targets against which services can be judged, not just by their respective government departments or regulators but increasingly by users themselves. These developments, together with legislation such as the Freedom of

Information Act (in force from 1 January 2005) and the Human Rights Act, are making it easier – in principle at least – for people to assess whether the services they receive are adequate and appropriate to their needs. A well-informed user will demand more of public services, be less likely to tolerate failure – and be more likely to complain if services are not up to standard.

Putting the customer, or the patient, at the centre of the service implies a huge range of changes for public services, not least a new approach to resolving complaints and learning from them. Increasingly the Ombudsman's Office is bringing together its learning and publicising it widely to help improve public services more generally.

### Improving accountability and transparency

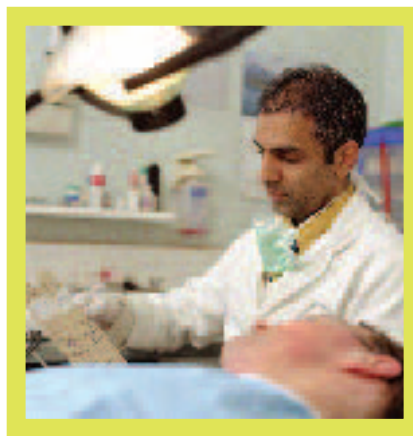
Public service providers are expected to be more accountable and transparent in how they operate than ever before. Many organisations have their own internal complaints mechanisms to help resolve customer problems. A range of bodies, such as the National Institute for Clinical Excellence, the Healthcare Commission and the Commission for Social Care Inspection monitor and promote these higher public service standards. Some of them are new, some have been recently reorganised. They each have distinctive and important responsibilities.

The Ombudsman plays an important part in this network. We have a unique overview, dealing with complaints across all government departments and agencies and the NHS. This means that we can and do identify systemic issues for government as a whole, and for individual organisations, and also the gaps and joins between service providers which so often create difficulties for the user.

In health care especially there is increasing public pressure for higher standards and greater accountability – fuelled in part by the reports of a number of key inquiries.

The Neale and Ayling Inquiries – into doctors who had repeatedly failed to observe proper standards of care – reported in September 2004. The reports called for early complaints resolution; accessible and easily-used processes; better communication with patients; and the establishment of systems to link complaints about the same practitioner working in different organisations.

The fifth report of the Shipman Inquiry, published in December 2004, made a number of welcome recommendations, including asking that the complaints handling role of primary care trusts (PCTs) should be enhanced so that people are able to make complaints directly to PCTs in relation to primary care contractors such as GPs, dentists and pharmacists.



The recommendations in these reports resonated with our own experience and it is to be hoped that the Department of Health will take them on board in designing and implementing a more responsive and patient-focused health and social care complaints system.

### The complexity of the broader complaints field

The number of bodies providing a widely differing range of approaches to complaints resolution has increased, creating a complex picture which is often perplexing to the individual. There are a range of complaint and claims handling agencies, tribunals, ombudsmen and, of course, the courts. In the field of health and social care for example, there is the Commission for Social Care Inspection, the General Medical Council, the Health and Safety Executive, the National Patient Safety Agency, the Healthcare Commission, the Audit Commission and the Parliamentary, Health Service and Local Government Ombudsmen.

This complexity was recognised in the Department for Constitutional Affairs' White Paper, *Transforming public services: complaints redress and tribunals*, published in July 2004. The White Paper included a series of proposals for improving public access to administrative justice through more appropriate dispute resolution. The Department emphasised that: 'The White Paper takes as its starting point what users want ... If they can get resolution of their dispute easily and early, without going to a tribunal, they would much prefer this.'

In its report *Citizen redress: what citizens can do if things go wrong*, published in March 2005, the National Audit Office concluded that: 'departments and agencies should ensure citizens have easy access to information about where to seek redress and that departments and agencies should actively manage their redress processes to provide accurate, timely responses to those citizens cost effectively.'

The NAO's findings and the DCA's proposals in particular have highlighted the need for a cross-cutting 'joined up' approach by government departments, their operational agencies and the NHS, to develop a common framework for complaints handling, accessible to and understandable by, the public.

This is something we recognise and are working to incorporate in all aspects of our work, but particularly through our formal and informal relationships with the organisations we investigate. We aim to help them to become more accountable, more open to complaints and to improve their standard of service.

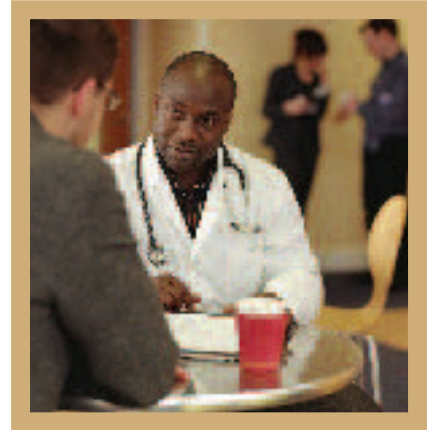
We are also working with other bodies to simplify joint working, where possible, and to make the system easier for customers to understand. For example, in anticipation of legislative changes that would allow us greater co-operation and flexibility, we are keen to maximise all existing opportunities for joint working between the Health Service, Parliamentary and Local Government Ombudsmen. This is so that those with complaints that cross the boundaries of health and social care in particular do not have to make separate and overlapping complaints about bodies that fall within different Ombudsmen's jurisdictions. During the year we worked on more than 12 joint cases with the Commission for Local Administration in England (Local Government Ombudsman).

### Changing responsibilities

There were major jurisdictional changes during the year with 60 new bodies coming under the Parliamentary Ombudsman's jurisdiction – including such diverse bodies as the Arts and Humanities Research Council, the Chief Inspector of Criminal Justice for Northern Ireland, the Medicines Commission, the Statistics Commission, and the Valuation Tribunal Service.

In addition 14 special health authorities – including the National Clinical Assessment Authority and NHS Direct – were added to the many health service bodies already subject to investigation by the Health Service Ombudsman.

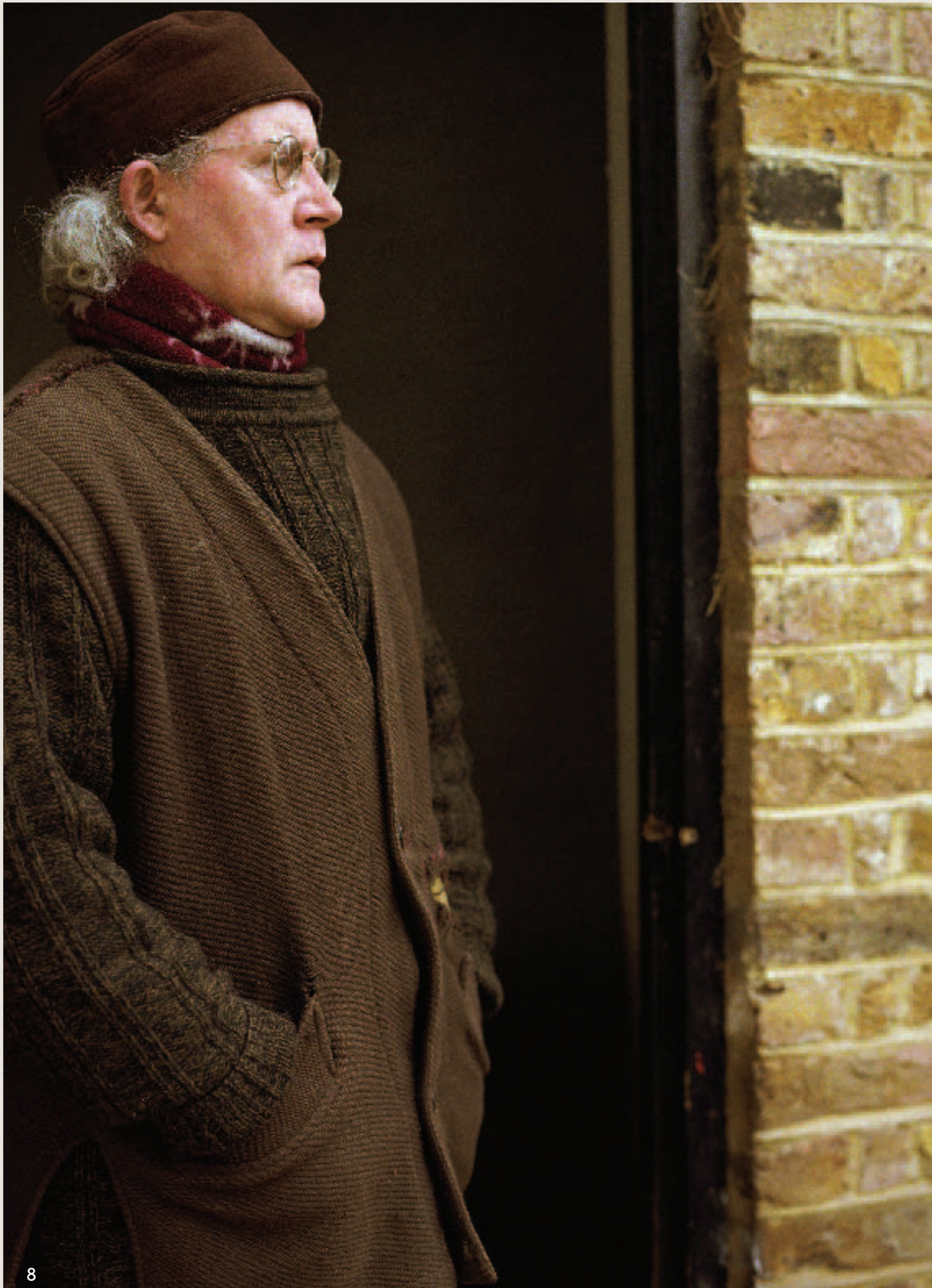
The Office saw another key change with the transfer of Ann Abraham's responsibilities as Welsh Administration Ombudsman to Adam Peat, the Public Service Ombudsman for Wales on 4 November 2004 – a transfer that took place seamlessly and successfully.



In addition, when the Freedom of Information Act 2000 (the FOI Act) came fully into force (from January 2005) responsibility for handling complaints about access to government information transferred to the Information Commissioner, Richard Thomas. We are pleased that together we achieved a smooth transition from the two voluntary access to information codes to the statutory freedom of information regime.









# Making a difference

During the year we accepted 4,189 complaints for investigation, a rise of almost 30% on 2003-04. Of these, 1,937 complaints were about NHS funded services, 2,214 about government departments and a range of other agencies and 38 about access to official information.<sup>1</sup>

All users of public services should benefit from our work, not just those who make complaints

The work of the Parliamentary Ombudsman is varied, covering a very broad range of government bodies, and a vast number of issues (see figure 3, pages 10-11 for details). Last year we received complaints about such diverse matters as the failure of a County Court to provide an acceptable level of service; the handling of an application for assistance under the Hague Convention; a nine month delay in processing an application for Income Support; a refusal to investigate an industrial accident; a refusal of cattle passports; inaccurate maps designating common land; the unfair confiscation of goods by HM Customs; and the mishandling of a claim for bereavement allowance.

All the complaints we handle are very important to the individuals concerned, and we are often able to help them with their particular problems. But some cases also highlight recurring themes and systemic problems, which have broader implications for service policy or delivery. This year we have worked in a number of new ways to ensure that lessons are learned from the complaints we receive. We believe that all users of public services should benefit from our work, not just those who make complaints. We should try wherever possible to help make sure that mistakes are not repeated. If the system needs to change, we identify that and make recommendations to help organisations to move on and improve.

<sup>1</sup> Our new complaints handling process means that we record all of the complaints on which we undertake investigatory activity as investigations – rather than distinguishing between ‘statutory’ investigations and others.

Figure 3

**Investigable complaints by department or public body**

Bodies complained about	Carried into year	Received in year	Concluded in year
Arts Council England	1	4	5
British Council	0	1	1
The Cabinet Office	1	1	2
The Certification Officer for Trade Unions and Employers' Associations	1	0	1
Charity Commission	5	9	7
Children and Family Court Advisory and Support Service	3	38	27
Civil Aviation Authority	1	0	1
Coal Authority	1	1	2
Commission for Racial Equality	2	4	5
Commission for Social Care Inspection	6	28	17
Countryside Agency	0	1	1
Countryside Commission <sup>a</sup>	0	1	1
Criminal Injuries Compensation Authority	4	13	12
Department for Constitutional Affairs	19	98	69
Department for Culture, Media and Sport	0	1	1
Department for Education and Skills	1	14	15
Department for Environment, Food and Rural Affairs	22	31	26
Department for International Development	0	1	1
Department for Transport	9	55	44
Department for Work and Pensions	220	860	715
Department of Health	3	18	13
Department of Trade and Industry	8	64	48
Disability Rights Commission	0	2	2
Employment Appeal Tribunal	1	0	1
English Nature	0	2	2
English Partnerships	0	5	3
Environment Agency	5	10	7
Food Standards Agency	1	1	1
Foreign and Commonwealth Office	6	19	21
Forestry Commission	0	1	1
Gas and Electricity Consumer Council (Energywatch)	0	1	0
Government Offices for the Regions	0	7	6
Health and Safety Executive	5	11	13
Heritage Lottery Fund	0	1	1
HM Customs and Excise <sup>b</sup>	5	30	18
HM Land Registry	0	15	10
HM Treasury	2	46	43
Home Office	22	166	124
Horserace Betting Levy Board	0	1	1
Human Fertilisation and Embryology Authority	0	1	1
Information Commissioner's Office	6	18	17
Inland Revenue <sup>b</sup>	44	348	122

Figure 3

**Investigable complaints by department or public body (continued)**

Bodies complained about	Carried into year	Received in year	Concluded in year
Learning and Skills Council	0	2	1
Legal Services Commission	14	53	35
Medical Research Council	0	1	0
Millennium Commission	0	1	1
Ministry of Defence	9	17	17
Northern Ireland Court Service	0	1	1
Northern Ireland Office	0	2	2
Occupational Pensions Regulatory Authority	0	3	2
Office for National Statistics	0	2	1
Office for Standards in Education (OFSTED)	2	3	2
Office of Communications (Ofcom)	0	3	2
Office of the Deputy Prime Minister	12	35	41
Office of Water Services (Ofwat)	1	8	7
Office of the Director of Fair Trading <sup>c</sup>	8	5	12
Office of the Immigration Service Commissioner	0	1	0
Pensions Ombudsman	0	13	7
Postwatch	0	2	0
Regional Development Agency	1	2	2
Sport England	0	1	0
Standards Board for England	0	6	4
Strategic Rail Authority	0	1	0
Traffic Director for London	0	1	1
Treasury Solicitor's Department	0	3	2
Valuation Tribunals Service	0	1	1
Others <sup>d</sup>	0	119	104
<b>Total</b>	<b>451</b>	<b>2,214</b>	<b>1,653</b>

<sup>a</sup> The Countryside Commission ceased to exist on 31 March 1999 when its responsibilities were transferred to the newly formed Countryside Agency.

<sup>b</sup> HM Customs and Excise and the Inland Revenue were merged in the newly formed HM Revenue and Customs on 1 April 2005.

<sup>c</sup> The Office of the Director of Fair Trading was replaced by the Office of Fair Trading on 1 April 2003.

<sup>d</sup> These include cases involving complaints against multiple bodies. For example 99 are occupational pensions cases involving the Treasury, Department of Work and Pensions, the Occupational Pensions Regulatory Authority and the National Insurance Contributions Office.

A further seven are Equitable Life cases involving the Government Actuary's Department, the Department of Trade and Industry and the Treasury.

There are several ways in which our work makes a difference. For example, we monitor trends in cases, to identify any particular shortcomings in the way departments deal with the public. Previous annual reports have described failures of communication and record-keeping, delays in responding to complainants, problems with hastily introduced systems, and misinformation from poorly trained staff. We are

concerned that these continue to be frequent features of complaints.

Sharing good practice with service providers is essential to help them ensure that mistakes are not repeated. We are therefore increasingly helping departments to develop and disseminate good practice in areas where problems have arisen in the past. We believe that our expertise, appropriately

applied in this way, can help directly to improve public services.

Over the next few pages we provide some examples of where we have added value from our consideration of health complaints. First, there is our role in highlighting problems with the consistent application of Department of Health policy on continuing care.

We also focus on serious problems arising from the current NHS complaints handling system. These problems prompted us to issue a special report with a number of recommendations for improvement.

Finally, there is the issue of good communications in avoiding complaints. This theme lies at the centre of a fruitful collaboration with the professional body for cardiac surgeons – to prepare a patient-focused guide to enable surgeons and their teams to communicate more effectively the risks of surgery and so enable the patient to give informed consent.

## Funding of long-term care

NHS funding for long-term care has been a long-standing concern of this Office. Continuing care is available for people who have long-term care needs because of disability, accident or illness. Funding for continuing care is provided by the NHS and usually involves services from the NHS, local authorities and private providers.

In 2001-02 a number of complaints to the Ombudsman, from patients who had been refused NHS funded care, suggested to us that there was a widespread problem in the application of the criteria in making these – admittedly difficult – judgements. It appeared that some disabled, frail or elderly people had been wrongly denied funding for their care by the NHS.

In February 2003, we laid a special report before Parliament - *NHS funding for the long-term care of elderly and disabled people (HC 399)*. In that report we recommended that the Department review the national guidance on eligibility for continuing care, making it much clearer in new guidance the situations when the NHS must provide funding and those where it is left to the discretion of NHS bodies locally. We also recommended that the Department ask strategic health authorities (SHAs) and primary care trusts to identify those people who may have been wrongly denied funding for long-term care since 1996 and undertake retrospective reviews of those cases.

Between February 2003 and December 2004 we received around 4,000 complaints and enquiries about continuing care. These complaints show that some people who should have received full funding experienced real hardship – for example using up most of their lifetime's savings to pay for their care needs. This is what happened to Mrs B's late mother, who funded her care through the sale of her home – see the case study opposite.

Our complaints provided evidence of significant delays in completing retrospective reviews and a lack of capacity to deal with the number of cases. There were also difficulties of interpretation of eligibility criteria (and the Department of Health's 2001 guidance on which those criteria were based) to decide who should qualify for full funding; and confusion about the distinction between continuing care full funding and 'free' nursing care – particularly at the higher Registered Nursing Care Contribution (RNCC) band. Added to this we found flaws, often systemic, in the way retrospective reviews were carried out; and delays in making restitution payments to those found eligible for continuing care full funding.

In more than half of the cases examined we found that the assessments had not been carried out properly. The problems included poor quality clinical input to assessment and decision making, inadequate documentation, failure to consider changes in a patient's health care needs over time, and lack of involvement of – and poor communication with – patients, carers and relatives.



Case Study

→ Ref E0676/05 Mrs B

## Assessing eligibility for long-term care



Mrs B's mother was in a nursing home from March 1999 until she died in January 2004. During this time Mrs B's home was sold to finance her care as she had not received NHS funding.

After reading an article in a local paper, about people who had been wrongly denied funding for continuing care, Mrs B wrote, in March 2003, to the Chief Executive of the Primary Care Trust (PCT) to ask for a review of her mother's case. An assessment took place and the PCT decided that her mother's care needs should have been met from January 2003.

Mrs B contacted the Ombudsman because she did not understand why the nursing home fees were not refunded from March 1999 when her mother first went into the nursing home.

The Ombudsman's Office explained the continuing care assessment process to Mrs B. Mrs B then put her case again to the PCT for funding the entire period of her mother's care arguing that her mother's condition had not changed significantly throughout that time.

The PCT gathered additional clinical evidence and a review panel decided that Mrs B's mother had indeed met the criteria for funding for the whole period that she was in the nursing home. Mrs B then received a payment to cover the full amount.

**'Without your very clear advice, knowledge and understanding of my situation I would most certainly not have arrived at the conclusion we are at today.'** (Mrs B)

## Avoiding the postcode lottery the need for clear, national, minimum eligibility criteria

Mrs P's husband was diagnosed with Parkinson's Disease in 1985 and his wife cared for him at home until early 2003 with the help of support services. However, following a stay in hospital, Mr P was discharged into a nursing home. His wife was sent a bill for his care by the Primary Care Trust (PCT) but she argued that, as her husband's need was primarily for health care and he had complex needs, he should qualify for fully funded NHS continuing care. The PCT told her that Mr P did not meet the criteria for full funding but did not say how this decision had been reached.

In a letter to Mrs P the PCT's continuing care manager said that if Mr P had been eligible for continuing care NHS staff would have said so. However, Mr P had never been assessed for continuing care. Department of Health guidance requires that all patients needing long-term care should have a continuing care assessment before being discharged from hospital – whether to a care home or to their own home. The patient and their family should be informed about the outcome and given the opportunity to make a formal appeal. None of this happened in Mr P's case.

Instead, Mr P had been awarded the highest band of 'free' nursing care, a separate funding stream to cover only the nursing element for those needing care who do not meet the criteria for full continuing care funding (Registered Nursing Care Contribution, RNCC).

Sadly, Mr P's condition was terminal. A continuing care assessment was finally carried out on 9 June 2003 and the PCT then decided that he was eligible for full funding. Mr P died on 26 June 2003. Mrs P complained to the Ombudsman that she did not understand why her husband qualified for the last two weeks of his life but not for the six weeks prior to the assessment.

The Ombudsman expressed concerns about the review undertaken by the PCT and the contradictory and unclear letters sent to Mrs P by the PCT. She recommended that a proper review should be carried out. This was undertaken and Mr P was found to have been eligible for full funding for the whole period. Mrs P was given a full apology for the distress she had been caused, and payment to cover the whole period during which her husband had been in the nursing home.

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'I am well aware that this [successful outcome] has occurred solely as a result of your intervention and efforts on my behalf for which I convey my sincere gratitude. The courtesy which you have afforded me in our conversations has been a great comfort.' (Mrs P)

Acting on this evidence we presented a further report to Parliament – *NHS funding for long-term care: follow-up report* (HC 144) – in December 2004. In that report we recommended that the Department of Health needed to lead further work in six key areas by:

- establishing clear, national, minimum eligibility criteria which are understandable to health professionals and patients and carers alike;
- developing a set of accredited assessment tools and good practice guidance to support the criteria;
- supporting training and development to expand local capacity and ensure that new continuing care cases are assessed and decided properly and promptly;<sup>1</sup>
- clarifying standards for record keeping and documentation both by health care providers and those involved in the review process;
- seeking assurance that the retrospective reviews have covered all those who might be affected; *and*
- monitoring the situation in relation to retrospective reviews and using the lessons learned to inform the handling of continuing care assessments in the future.

Mr and Mrs P's case – see the case study opposite – demonstrates the need for clear and consistent national eligibility criteria, properly interpreted and applied.

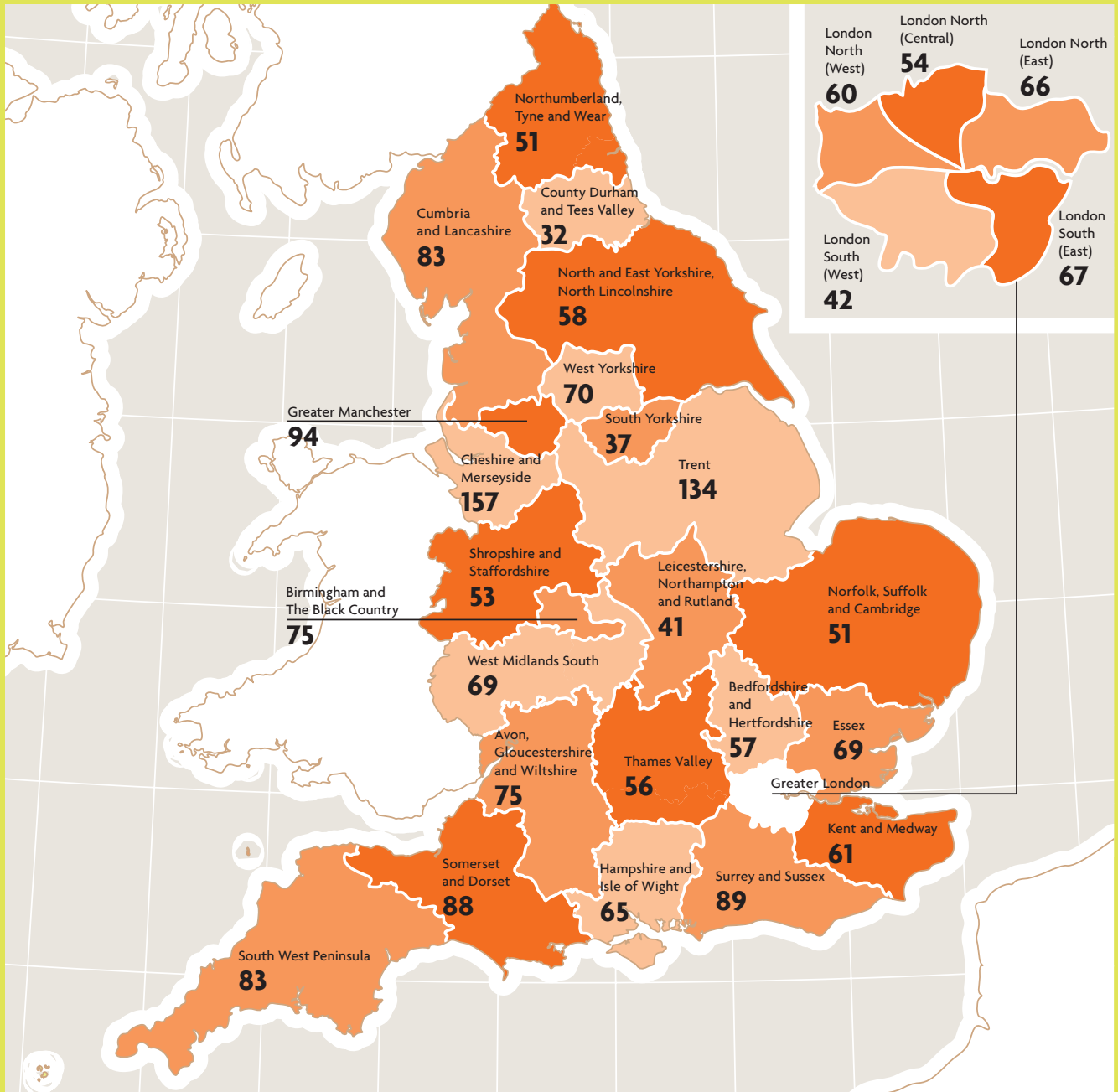
The Ombudsman met Dr Ladyman, the then Parliamentary Under Secretary of State for Community, to express her concerns. She welcomed his subsequent announcement to Parliament on 9 December 2004 that he had commissioned a 'national framework for the assessment for fully funded NHS continuing care' and we now look forward to taking part in a consultation process which will inform the Department's views on the form this should take.

We also agreed with Dr Ladyman that we would work closely with his staff and those from all the strategic health authorities to support them in their resolution of the large number of complaints which were still outstanding. In December 2004 a number of our staff spoke at a special meeting (called for and hosted by the Department of Health) to brief strategic health authorities' continuing care leads.

Since then we have organised meetings with each strategic health authority to explain our concerns and share good practice – so that relatives and carers who complained to us *with justification* about flawed retrospective review processes and consequent unsafe decisions could have their cases properly reassessed in a fair and transparent way. We now expect that the majority of cases are properly and fairly dealt with, obviating the need for people to bring complaints to the Ombudsman. By the end of March 2005, we had visited half and hope to finish the full programme of visits by the end of this summer.

We would like to acknowledge the enormous effort that has been put into this work by officials in the Department of Health and NHS staff across the country. We look forward to fruitful and open discussions between the Department, and those with an interest in long-term care, about the establishment of fair and clear national eligibility criteria.

<sup>1</sup> Our findings were supported by the evidence gathered for the Department of Health's own independent review - *Continuing care: review, revision and restitution*, published on 9 December 2004.



**Number of investigable complaints received from strategic health authorities in England**



Figure 4

**Geographical distribution of investigable complaints received<sup>a</sup>**

Region of origin	Number of complaints received	Complaints per 100,000 of population
Avon, Gloucestershire and Wiltshire	75	3
Bedfordshire and Hertfordshire	57	3
Birmingham and the Black Country	75	3
Cheshire and Merseyside	157	7
County Durham and Tees Valley	32	3
Cumbria and Lancashire	83	4
Essex	69	4
Greater Manchester	94	4
Hampshire and Isle of Wight	65	4
Kent and Medway	61	4
Leicestershire, Northamptonshire and Rutland	41	3
London North (Central)	54	4
London North (East)	66	4
London North (West)	60	3
London South (East)	67	4
London South (West)	42	3
North and East Yorkshire and Northern Lincolnshire	58	4
Norfolk, Suffolk and Cambridgeshire	51	2
Northumberland, Tyne and Wear	51	4
Shropshire and Staffordshire	53	4
Somerset and Dorset	88	7
South West Peninsula	83	5
South Yorkshire	37	3
Surrey and Sussex	89	4
Thames Valley	56	3
Trent	134	5
West Midlands South	69	5
West Yorkshire	70	3
Totals for England	1,937	—

<sup>a</sup> Figures in last year's *Annual Report* included 'premature' cases. The lower number of cases for this year reflect both this change in how we record our statistics and the declining number of complaints about continuing care.

## A new approach to NHS complaints

The complaints we receive and our long experience in this area give us a unique overview of complaints handling in the NHS. Over the past few years we have been contributing to efforts to improve the process for complainants. This year our concern about the time this was taking and the effect on complainants led us to publish a special report, *Making things better? – a report on reform of the NHS complaints procedure in England* (HC 413).

In that report we set out the long history of review and consultation culminating in the publication of *NHS complaints reform, making things right* by the Department of Health in April 2003. This set out the vision of a new patient-focused complaints system. However, the interim changes introduced by the Department in summer 2004 did not fulfil this aspiration and, moreover, because of poor planning and haste, created confusion for many complaint handlers and complainants.

The Department explained that the delays in introducing more radical change reflected their wish to take into account the findings of the fifth report of the Shipman Inquiry and the reports of the Neale and Ayling Inquiries.<sup>1</sup> Our special report, *Making things better?* is designed to shape the next round of changes so that we miss no further opportunities to make a truly patient-based and responsive complaints system for the NHS a reality.

<sup>1</sup> These were Inquiries into doctors who had repeatedly failed to observe proper standards of care.

Our report revealed a range of endemic issues in the current complaints system including lack of leadership; fragmentation of procedures between the NHS, Foundation Trusts and social care; a focus on process instead of quality of outcome for patients; and an absence of redress for justified complaints.

Many patients who complain about the NHS face unacceptable barriers in getting a satisfactory local response from health care providers. That and the seriousness of the complaints we

receive is exemplified by the case of Miss R – see below.

Our special report highlighted our concerns that fragmentation of complaints systems across health and social care and the NHS and the private sector had led to a system which made it difficult for patients and their families to know who to complain to when things had gone wrong. For example complainants who are unhappy about the handling of their complaints by a social services authority and subsequently by the Commission for Social Care

Inspection (CSCI), might need to refer the complaint both to the Local Government Ombudsman (who can consider complaints about local authorities) and the Parliamentary Ombudsman (who can consider complaints about CSCI).

The case of Mr K, a learning disability patient with complex needs, illustrates the importance of joint working to handle complaints covering both health and social care – see case study opposite.

#### Case Study

→ Ref E719/02-03 Miss R

## Dealing with dishonest conduct in NHS complaints handling



Miss R's mother, Mrs R, had suffered breathlessness and chest pains for some time. Her GP referred her for tests including a chest X-ray, blood tests and an ECG. He told her that the test results were normal but prescribed medication for gastric problems, asthma and depression. The GP reviewed her condition the following month. Two months later, Mrs R had a heart attack and died. The post mortem showed that she had been suffering from coronary artery disease and chronic bronchitis.

Miss R complained about the GP's treatment of her late mother and questioned why he had not referred her to a cardiologist. The GP said he had also prescribed medication used

in the management of angina, and produced a computer record in support. However, Miss R could not find any medication for angina in her mother's house and explained that her mother always talked to her about her medication, but had not mentioned anything for her heart. She was dissatisfied and asked the Primary Care Trust to carry out an Independent Review of her complaint but this was turned down.

Miss R complained to the Ombudsman. We requested an audit of the GP's computer entries for Mrs R's appointments and checked these against the handwritten medical records. This showed that no prescription had been issued for

heart medication. Entries had been made retrospectively to make it appear that they had been prescribed. The GP admitted that he had panicked and altered Mrs R's medical records. The Ombudsman referred this issue to the General Medical Council.

Drawing on the advice of two professional assessors Miss R's complaint was upheld. The Ombudsman found that the GP had failed to provide an adequate standard of care and treatment to Mrs R and that Miss R had suffered unnecessary distress because of the delay and obstruction she faced in having her concerns considered.

## Delivering a seamless service to complainants

Besides highlighting areas of concern *Making things better?* included a number of recommendations. In particular we called for commitment and leadership from the Department of Health in setting the core standard for complaint handling to be met by **all** providers of NHS care in England and suggested that the Department should ensure the adoption of a common approach to complaints across health and social care. We also recommended that the Healthcare Commission, in its role of inspector, should assess the performance of trusts against core standards and share learning from complaints across the health service – an approach fully supported by the Healthcare Commission.

This, together with training and development for complaints handlers and leadership from the Department and local health chief executives, should ensure an accessible service for all; thorough investigations of complaints; a culture of openness and non-defensiveness by senior managers; the provision of a full range of remedies for justified complaints at all levels of the system; and the implementation of recommendations arising from the investigation of complaints to try to make sure that mistakes do not recur.

The Department agreed to our recommendation to develop a new core standard for complaint handling. We look forward to working with the Department, the Healthcare Commission, and NHS providers over the coming months to help develop and deliver a new, responsive and patient-focused complaints procedure.

Mr K had learning difficulties, epilepsy and a history of difficult behaviour. In June 2000, he was discharged from a medium secure unit – where he had been detained under the compulsory provisions of the Mental Health Act (MHA) – to his mother's home.

The responsibility for his aftercare lay jointly with the Health Authority and the Local Authority, which took the lead role. At that time there was no psychiatrist available in the area to act as Mr K's Responsible Medical Officer (RMO) – helping him to access appropriate services for his needs. In early 2001 Mr K was the subject of criminal charges related to his behaviour and was remanded to prison. His mother, Mrs K, felt that his detention was related to a lack of suitable aftercare.

In October 2001, the court ordered compulsory detention for Mr K, under the MHA, to a medium secure assessment and treatment facility some distance from Mrs K's home. Mrs K felt the placement was inappropriate for her son's needs and

she found the travel difficult and expensive. Mr K remained there until May 2004, when the Primary Care Trust (PCT) found him a new placement in another town.

Mrs K felt that the PCT and the Health Authority failed to provide suitable aftercare for Mr K after June 2000; that they inappropriately placed him in the secure unit in 2001; that they failed to provide a RMO or local accommodation; and that they did not respond appropriately to requests for an epilepsy specialist to treat Mr K.

The Ombudsman upheld the complaint about aftercare, finding that the NHS contribution to Mr K's aftercare prior to 2001 did not meet even a minimum reasonable standard. The PCT apologised to Mrs K and agreed to prioritise the recruitment of a Learning Disability Psychiatrist, planned jointly with the local mental health NHS Trust. Until this post was filled, the PCT agreed to consider alternative clinical support for patients leaving secure units.

### Benefiting from joint working

In Mr K's case the responsibility for his care lay with both the NHS and his local council. In order to understand why he was not placed more suitably after his remand in prison, why there was no RMO and why he subsequently needed to be placed so far from home, a joint approach to the investigation was needed. The alternative would have been for two completely separate investigations – by the Local Government Ombudsman into the actions of the council, and by the Health Service Ombudsman into the NHS bodies – with the risk that the end product would have left gaps and unanswered questions.

## Explaining risk and achieving informed consent

Mrs W was diagnosed with cancer of the oesophagus and her doctors advised that surgery was necessary. However, the Consultant Surgeon performed a different procedure to the one originally discussed with Mrs W, who subsequently died as a result of complications from the operation.

Mrs W and her husband had met the Consultant Surgeon and discussed the benefits and risks of a conventional procedure ('oesophagectomy'). The evening before the operation, the Consultant Surgeon told Mr and Mrs W that he had decided to perform keyhole surgery, rather than the planned procedure. No record was made of the discussion. The Surgeon did not tell Mr and Mrs W that he had never performed this keyhole surgery before. On the day of the operation Mrs W signed a consent form for the procedure presented by the Senior House Officer but he did not discuss any details of the operation with the family.

Mr W's complaint was upheld. The Ombudsman found that the keyhole surgery technique had only been mentioned during a brief discussion the night before

the operation, and that this was unacceptable. The fact that the procedure was unusual made it even more imperative for the Consultant Surgeon to make sure that Mrs W understood precisely what she was giving her consent to. Poor documentation was also a problem - for example, no record was made in Mrs W's notes or on the consent form of the discussion the evening before the operation. The Ombudsman also found it unacceptable that the Senior House Surgeon, a junior doctor, was given the responsibility of obtaining signed consent on the morning of the operation itself.



## The introduction of the Healthcare Commission

A major change in NHS complaints handling took place on 31 July 2004, when responsibility for the independent review stage passed to the Healthcare Commission. In our comments on the Regulations which introduced this change, we welcomed the opportunity for greater consistency and improved complaints handling which this move presaged. However, we also expressed our concern about the preparedness of the Healthcare Commission for the role. The Healthcare Commission had had to develop a major complaints handling function from scratch in a very short period of time, a highly challenging task. We repeated our concern to the Public Administration Select Committee that any problems encountered by the Healthcare Commission could damage the credibility of the new arrangements. Nevertheless the transfer went ahead on 31 July 2004, and we offered our full support to the Healthcare Commission in delivering its new responsibility.

Since 31 July 2004 the Healthcare Commission has received more than twice the forecast number of complaints and almost four times the number handled by NHS Trusts under the previous arrangements. As at June 2005, the Commission had a significant backlog of complaints where the service standard, of resolution of the complaint within six months, could not be met. This is clearly serious for complainants and we have received several complaints about delay and poor communication at the Healthcare Commission. It also has significant implications for this Office. Unless we exercise our discretion to entertain a complaint

direct, complaints to the Ombudsman about NHS services will first have been considered by the Healthcare Commission.

The Ombudsman has held regular meetings with the Chair and Chief Executive of the Healthcare Commission to understand their recovery plan and to offer feedback and support. There has been extensive liaison between our staff. The Healthcare Commission has assured the Ombudsman that the situation will have improved significantly by autumn 2005. With the full support of the Healthcare Commission we are monitoring the position regularly.

## Sharing learning to improve informed consent

We regularly receive a significant number of complaints from patients about the quality and quantity of information they received prior to giving consent for surgery. There is much guidance about how doctors should 'consent' patients, but there is a noticeable absence of guidance which takes the patient's perspective.

The importance of ensuring that patients are given full information about the potential risks of surgery is underscored by Mrs W's case – see page 20.

In a new initiative for the Ombudsman we worked with patients and with the Society of Cardiothoracic Surgeons of Great Britain and Ireland, the General Medical Council, Department of Health, Healthcare Commission and other key healthcare bodies to produce a good practice guide for cardiac surgery teams.

*Consent in cardiac surgery: a good practice guide for agreeing to and recording consent*, is based on the recommendations of workshop discussions with patients and patient groups. The three-part guide aims to strengthen the patient's role in the decision making process. It sets out a framework for dialogue between the patient and the cardiac team and focuses on key areas for improvement: communication, documentation and the difficult issue of explaining risk to patients.

The main guide, aimed at the cardiac team, addresses each stage of this new 'informing process', discusses the rationale behind the stages and identifies good practice in

documenting the consent process. A separate, easily-updateable, 'ready reckoner' provides surgical team members with a quick reference tool for accessing pooled national data on surgical outcomes and pre-operative predictors for risk. The third part, a simple risk analysis diagram for surgical teams to use in discussing risk with patients, identifies for patients the likelihood and the impact of potential risks and provides a record of the discussion for the patient to take away and consider. This gives patients a simple, easy to understand guide to possible adverse outcomes – allowing them to make decisions about the value of surgery and its possible impact on their life expectancy and lifestyle.

We are now working with the Society of Cardiothoracic Surgeons and the Department of Health to help to embed this practice amongst cardiac teams and evaluate the effect. We hope that the guidelines might be used as a model for similar initiatives in other clinical specialties.



## Government departments and agencies – identifying issues, improving services

The Office's Parliamentary work has for some years tended to concentrate on a fairly small number of departments and agencies which have been the subject of the bulk of our complaints. The Child Support Agency and other Department for Work and Pensions bodies continue to attract considerable numbers of complaints. Recently there have been a number of complaints from customers of the Legal Services Commission. Other issues, such as tax credits, have emerged as significant during the year.

However, it would be quite wrong to imagine that the Office is solely concerned with identifying problems. In this section we set out some of the range of ways in which we are working closely and practically with departments and agencies to support improvements which will make a positive difference to the lives of their customers. We also report on the transition from the voluntary Code of Practice on Access to Government Information (which was policed by this Office) to the statutory freedom of information regime (which is overseen by the Information Commissioner).

## Tackling Child Support Agency performance

We continue to find significant problems in the operations of the Child Support Agency (CSA). The human impact has been severe, involving financial difficulties, anxiety and stress for many people who complain to us, often stretching over a number of years. It is disappointing that the problems highlighted in our last *Annual Report* have not been addressed, ranging from delays in processing cases to problems with enforcement, and poor communication with customers.

In 2004-05 we received 304 complaints about the Agency (this compares with the 222 new CSA cases in 2003-04). We are aware that the number of CSA complaints that the Ombudsman receives is only the tip of the iceberg. Many complaints are handled by the Independent Case Examiner's Office which provides a non-statutory, independent complaints handling service for the Agency. Only a small proportion of the cases investigated by the Independent Case Examiner are subsequently referred to the Ombudsman.

During the year, we identified continuing and serious problems with the CSA's computer system. We have also been concerned about poor documentation and record-keeping. The computer failings have meant that the CSA have had to deal with an increasing number of cases manually. We recognise the need to do so in order to ensure that individual claims are processed as quickly as possible. However, operating electronic and manual systems alongside one another have given rise to concerns about the

impact on standards of data recording. We are concerned that processing claims manually may generate problems of its own.

Another area of significant concern centres on the slow progress made by the CSA in processing new claims and the delays in making assessments. The method of calculating child support was changed in 2003. Although the new calculation rules are simpler and more straightforward than before, management of the transition has presented significant challenges. We have received a large number of complaints about delays and mishandling of cases under the old rules. It is disturbing that there have been systemic failures to keep people informed about what is happening in their individual cases – a basic tenet of good customer service. During the year we continued to monitor the situation carefully and liaised closely with CSA officials.

## Securing compensation for ongoing losses and applying new principles to similar cases

**The outcome of Mrs R's case has wider implications for other families who have suffered similarly because of maladministration.**

The Child Support Agency received a completed maintenance application form from Mrs R in October 2002, well before the new system of calculating child support took effect on 3 March 2003. However, the CSA did not send a maintenance enquiry form to her ex-partner, Mr Y, until 25 April 2003. The date was crucial as it set the date when he became liable to pay child support **and** the basis for calculation.

The CSA assessment of Mrs R's child support under the new system turned out to be much less than the amount she would have been entitled to under the previous system. The Agency acknowledged their delay in sending a maintenance enquiry form to Mr Y and awarded her £50 for inconvenience. She did not consider this was adequate for the loss she had suffered.

In November 2003, her case was upheld by the Independent Case Examiner. However, although the Agency awarded Mrs R a further £500, the Examiner concluded that it was not possible to know the extent of Mrs R's loss with any degree of certainty.

Mrs R suggested that the Agency contact Mr Y direct and ask him for the necessary information. We investigated and, although we agreed with the CSA that they had no legal basis to insist that Mr Y provided



information, we thought it reasonable for the CSA to contact him to see if he would co-operate. They did so and Mr Y provided the information.

The discussions between the Ombudsman and the Agency about adequate redress for Mrs R lasted from October 2003 until March 2005 but the outcome was positive for Mrs R and others in a similar position. The Agency agreed to compensate Mrs R for her lost entitlement to past maintenance. However, the delay in processing her claim also meant that her loss extended into the future while her children are of an age to qualify for child support. We consider it appropriate that, in order to put Mrs R back into the position she

would have been in had the maladministration not occurred, the Agency also arranged to compensate her annually on an ongoing basis. The CSA will consider further financial redress at yearly intervals and agreed to pay interest on these amounts.

The effects of the case are wide ranging as Mrs R was not the only person to have suffered losses because of delays in assessing claims under the former rules for child support. The CSA agreed to apply these principles to other similar cases, where the amount payable under the new scheme is less than that which would have been payable had the case been properly assessed under the old scheme.

### Ongoing losses – a landmark case

Delays in dealing with cases meant that a number of old cases were not dealt with until a new system of calculating child support came into operation. This meant that some people who had been waiting for an assessment did not receive as much child support as they would have done if the cases had been assessed under the old system. In a landmark case CSA agreed to compensate Mrs R for her ongoing losses – see case study, page 23 – resulting from CSA delay which led to her case being assessed under the new rules rather than the old. Moreover, following lengthy discussions, we welcomed the CSA's decision to accept and apply generally the broad principles highlighted in this case: namely that people in situations similar to Mrs R's should be compensated for losses caused by delays in dealing with their case under the previous scheme, and receive ongoing compensation while they qualify for child support maintenance. We also welcomed the CSA's decision to award payments to complainants who have suffered severe distress or embarrassment as a result of their mistakes. This development is important in relation to our general interest, referred to earlier in this *Report*, in ensuring adequate redress and compensation for public service failures.

While drawing attention to these failings we acknowledge the commitment and hard work of many staff across the CSA as well as a lack of adequate training for some. This was highlighted in *Child Support reform: the views and experiences of CSA staff and new clients*, a report produced by the Personal Finance Research Centre at the University of Bristol on behalf of the Department for Work and Pensions. The report found that staff had experienced

difficulties because of the number and variety of new initiatives and systems brought in all at once. It also highlighted the inadequacy of training for CSA staff on the new system. These findings underline the need for sufficient time and resources to be allowed for staff training, especially when major changes are introduced in the provision of public services.

We recognise that the Agency faces considerable challenges. CSA's area of work is very complex and from our own investigations we recognise that it can be difficult for the Agency to secure payments from non-resident parents. Although some of the problems it faces are beyond its powers to resolve, many are the result of management and system failures which need to be addressed as a matter of urgency.

## Improving customer focus - the Department for Work and Pensions

We have been working with the Department for Work and Pensions (DWP) to ensure improvements in complaints handling across the Department's services as a whole. There has been extensive liaison, including a number of meetings between the Ombudsman and senior officials from the Department.

This year we received 861 new complaints about the Department's service provision (compared to 812 in 2003-04), making it one of the major sources of complaints to the Office. However we are pleased that complaints against Jobcentre Plus, the Pension Service and the Disability and Carers Service are all down by at least 10%.

The main features of complaints to this Office were poor record-keeping and incorrect provision of information. We were able to achieve early and speedy resolution of a

Figure 5

### Complaints against the Department for Work and Pensions 2004-05

Body	Carried into year	Received in year	Concluded in year
Department for Work and Pensions	220	861	715
<i>of which...</i>			
Child Support Agency	85	304	228
Jobcentre Plus	80	279	248
The Pension Service	38	156	145
Disability and Carers Service	7	56	41
Appeals Service	7	29	34
Debt Management	1	6	5
Others <sup>a</sup>	2	31	14

<sup>a</sup> Others include the Rent Service, DWP Medical Services and the Independent Case Examiner.

number of complaints, following our intervention. But this raises the question of why the complaints were not handled properly in the first place. We recognise that mistakes will inevitably happen from time to time but it is clear from our work that a number of complaints could have been resolved much earlier by the Department – thereby saving anxiety and distress for the complainant and public money in handling the complaint.

We set out in the following case studies some example of poor performance by Jobcentre Plus. Figure 5 provides more detailed information on the source of complaints from agencies within the Department's remit.

The effects for those at the receiving end of poor service can be serious – affecting the health, financial situation and mental state of individuals and their families. The case of Mrs H – see opposite – illustrates the distress caused by mistakes in the way that Medical Services operates. It also shows how a complainant's situation can be made even worse by the failure to deal with a complaint in a fair and proper manner. The case of Mrs H concerns the medical examinations disabled people often have to undergo in order to claim benefits. It is essential that these examinations are carried out in an appropriate and respectful way. Our investigation of this complaint not only produced a positive outcome for Mrs H but also led to wider improvements in the system.

#### Case Study

→ Ref C1158/04 Mrs H

## Treating customers with respect medical examinations for benefit assessments

Mrs H complained to the Ombudsman that Medical Services, under contract to Jobcentre Plus, failed to investigate properly a complaint she had made about an inappropriate medical examination, carried out in connection with her claim to disability living allowance. Mrs H felt that Medical Services' investigators did not take her account of what had happened seriously and failed to interview her daughter, who had been the sole witness to the examination. In view of the intimate nature of the incident complained about, Mrs H was also upset at being interviewed by two male investigators.



The Ombudsman agreed that it was insensitive of Medical Services to use two male investigators to interview a female complainant who had complained about an inappropriate intimate examination by a male doctor. She was also concerned that they did not interview Mrs H's daughter. The Ombudsman found that the report of Medical Services' Serious Complaints Investigation Team lacked clarity and contained a major factual error, which undermined Mrs H's confidence in Medical Services' investigation of her complaint. The Ombudsman concluded that Medical Services had failed to follow their own complaints procedure and had handled her complaint badly.

Medical Services apologised to Mrs H and made her a payment of £500 in recognition of the distress she had suffered.

Mrs H suggested that Medical Services should publish a booklet for patients about what to expect at a medical examination. Medical Services were asked to consider this but they said that it was not necessary as they had already acted and improved the letter sent out to patients prior to medical examinations.



Case Study

→ Ref C660/04 Ms W and Mr F

## Providing accurate information the impact of misdirection on customers

Ms W was receiving income support and disability living allowance. In 2003, she and Mr F sought advice from Jobcentre Plus about the effects on her benefit entitlement if they moved in together. They visited their local office, together with Ms W's community care practitioner, and were told that, if Mr F reduced his hours of work to fewer than 24 a week, Ms W would be entitled to £117 a week income support. On the basis of this advice, the couple moved in together and Mr F reduced his working hours. Shortly afterwards, Ms W's income support was cut by just over £40 a week. Mr F also lost income as his earnings fell by £25 a week through working shorter hours.

They complained to Jobcentre Plus and said that the episode had caused them great distress. Mr F had previously suffered from stress and anxiety and the events had worsened his condition. Jobcentre Plus admitted the mistake, but they refused to pay the couple any compensation on the grounds that they had suffered only a financial disappointment, not an actual financial loss.

Following the Ombudsman's investigation, Jobcentre Plus awarded an ex gratia payment to cover the couple's lost income for four weeks (the time it would reasonably have taken for them to return to their former circumstances), and consolatory payments because of the gross inconvenience, the severe stress both had suffered, and the deterioration in Mr F's health. The Chief Executive of Jobcentre Plus also apologised for the body's poor performance.



The rules governing entitlement to social security benefits are complex. People need to be given accurate information and advice about the implications of claiming particular benefits. Ms W's and Mr F's complaint illustrates the impact the provision of incorrect information can have on people's lives – see left. Following our investigation, the couple received an ex gratia payment and an apology. In addition, we welcome the Chief Medical Officer's undertaking to take steps to prevent a recurrence of this problem.

Mr G's case also exemplifies the need for correct information and the proper application of benefit rules by benefit agencies – see the case study opposite. Following the Ombudsman's investigation, Mr G received compensation and the case helped to highlight the need for improvements in the performance of Jobcentre Plus.

Given our concerns about complaints handling across the Department for Work and Pensions during the year, we welcome the fact that the Department has announced that it will set up a prototype second independent tier of complaints handling throughout all areas of its work. This will follow the model of the Independent Case Examiner who already undertakes this function for CSA. We fully support this development, which is in the best interests of complainants who want complaints dealt with as quickly and effectively as possible.



Case Study  
→ Ref C419/04 Mr G

## Avoiding misdirection and delay in handling benefit claims



Mr G was separated from his wife and receiving incapacity benefit. In June 2000 – as he had custody of his two children for 160 days a year – he claimed additional benefits from Jobcentre Plus for the children's support on a pro rata basis. In October 2001 Jobcentre Plus turned down his claim on the basis that he was not entitled to child benefit for the children (this was being paid to his wife). He and his wife arranged the transfer of child benefit to Mr G, and he reclaimed the child dependant's increase. The benefit was awarded from November 2001. Mr G claimed compensation for his lost entitlement to the increase for the period from June 2000 to November 2001 on the basis that if a decision on his claim had been made in June 2000, he and his wife would have transferred the child benefit sooner.

Mr G's request for compensation was turned down. After checking the rules Mr G complained to the Ombudsman. The investigation found that Jobcentre Plus had misdirected Mr G when he contacted them for information, having wrongly informed him that his wife's earnings were

crucial to his claim. They had also failed to give him a decision on his claim within a reasonable time.

Following the Ombudsman's findings, the Chief Executive of Jobcentre Plus agreed to award Mr G an extra-statutory payment of just over £1,600 in respect of his lost entitlement to child dependant's increase. He also awarded him over £200 interest, because of late payment of the arrears, a consolatory payment of £250 for the gross inconvenience he had suffered and reimbursed his out-of-pocket expenses in pursuing the claim. The Ombudsman criticised the severe delays by Jobcentre Plus in dealing with Mr G's claim. The Chief Executive acknowledged the criticisms, offered an apology to Mr G, and asked the manager of the local office to remind staff of the need for prompt action to ensure that such situations did not happen again.

## Working with the Legal Services Commission

The Legal Services Commission (LSC) is responsible for administering the legal aid system in England and Wales, and for ensuring that people get the information, advice and legal help they need to deal with a wide range of everyday problems. We have developed a positive working relationship with the Commission and have resolved many cases this year without the need for detailed investigations.

Where someone involved in a civil case gains or keeps money or property, with the help of public funding, the LSC are required to impose a charge, known as the

statutory charge, to recover the costs paid out of the legal aid fund. Normally, the charge has to be paid immediately, but payment can be deferred where the money or property is to be used to provide a home for the assisted person and any dependents. To qualify for deferment, the assisted person has to agree to the LSC registering a charge against the property that is to be used as the assisted person's home; the assisted person also has to agree to pay simple interest on the principal sum at a specified rate.

We have received a number of complaints about the way in which the LSC has handled the statutory charge on people's property. These complaints mainly arose as a result of a computer fault some years ago. The fault meant that the LSC could not guarantee the accuracy of the

information included in computerised annual statements sent to those people with statutory charges telling them of the full extent of their liability under the charge. As a result, the Commission decided to stop issuing annual statements, rather than risk sending out inaccurate information. Over the last 18 months, the LSC have been bringing all statutory charge cases up-to-date and sending accurate statements to the individuals concerned. For some people it is the first time they have been notified of the level of their debt and, in particular, the amounts of interest that have accrued, which has led to a number of complaints.

These problems affect approximately 70,000 people. We have therefore been working with the LSC to try to ensure that it offers appropriate redress in all cases where the failure

### Case Study

→ Ref C0792/04 Mrs J

## Offering proper redress and avoiding delay

Mrs J complained that the Legal Services Commission had mishandled her statutory charge. In the early 1990s, Mrs J was awarded legal aid to fund matrimonial proceedings, and her former husband was ordered by the court to contribute towards her costs. In 1996, she bought a new house, and the Commission took steps to register a statutory charge on that property. Mrs J understood from discussions with her solicitor that the Commission would pursue her former husband for the costs awarded against him.

However, they failed to notify her when they stopped pursuing her former husband for costs, and in addition she was given incorrect information by the Commission about her statutory charge liability. Mrs J also complained that the Commission refused to offer her proper redress for the effect of their mistakes. The situation spanned a number of years, and was finally resolved this year because of the intervention of the Ombudsman.

The Ombudsman found that Mrs J's complaints were fully justified: there had been maladministration – the Commission had failed to provide Mrs J with the level of service that she was entitled to expect. Moreover, as a result of the errors, additional

to provide statements has had a detrimental impact on an individual without the need for them to make a complaint to us.

One outstanding issue is the question of inconvenience – or ‘botheration’ – payments in such cases. We consider that public bodies should make appropriate payments in recognition of the distress and inconvenience suffered as a result of failings by public service providers. We have raised this with the LSC and hope that a satisfactory solution will be agreed soon.

A number of other problems arose in relation to statutory charges, during the year. Mrs J’s case – see below – is typical of these.

interest had accrued on her statutory charge liability. The Chief Executive of the Commission offered her apologies to Mrs J, and arranged for a sum of just over £2,900 to be reimbursed to her statutory charge account. The Chief Executive also offered Mrs J an ex gratia payment of £200 in respect of the distress she suffered as a result of the Commission’s failings.

## Bereavement - easing the bureaucracy

Sometimes one case can highlight wider problems with the way that public services operate. These are not always about system failure – public services can often frustrate users simply because of unnecessary bureaucracy or the attitude and behaviour of the public servants delivering the service. Having to deal with onerous bureaucratic processes is especially upsetting for people who are already distressed due to the death of someone close.

The Ombudsman’s investigation of one complaint prompted a cross-departmental review of the bureaucratic maze that confronts people who have to deal with the affairs of someone who has died and led to some very practical outcomes.

In the case in question, Mrs B contacted us following the death of her husband in 2004, to express concerns about the time taken to resolve pay and pension issues. She was also understandably upset about the lack of response to her letters and telephone calls, and about the generally poor quality of service she received while dealing with her late husband’s affairs. (Case ref C1615/04 Mrs B.)

We found that the difficulties she had encountered were indicative of wider flaws in the bureaucratic process. The Ombudsman wrote to the Cabinet Office in April 2004 to express concerns that the number of transactions and amount of form-filling faced by bereaved people had become onerously bureaucratic. The Cabinet Office responded in a practical and positive way by carrying out research with people across the

public, voluntary and private sectors, which confirmed our findings.

This was followed by a collaborative project involving the Cabinet Office, the Probate Service, the Inland Revenue, the DWP, and the Office of the Deputy Prime Minister as well as local authorities. In March 2005, the Regulatory Impact Unit in the Cabinet Office published *Making a difference: bereavement*, a report setting out a number of practical recommendations to tackle the unnecessary bureaucratic burdens faced by bereaved people, and by front-line staff involved in the processes and decision-making on issues which commonly arise when someone is bereaved.

*Making a difference* recognised the action of the Ombudsman in drawing attention to these issues. The report set out a series of detailed actions to reduce and remove unnecessary burdens over the short- and medium-term, as well as recommendations to tackle the more strategic issues. It recommended streamlining the forms and death registration processes and listed actions to be taken by the Department for Work and Pensions, Probate Service, Home Office, Office of the Deputy Prime Minister, and the Inland Revenue (now HM Revenue and Customs).

The outcome of this work should have a practical impact in making the whole process more sensitive to people’s needs. As the foreword to the report states:

‘While we cannot remove the burden of grief surrounding the death of loved ones, this much welcomed joint-government initiative will go some considerable way to making a real difference to bereaved people by placing their needs first, and at the centre of better public service delivery.’

## Tax credits – putting things right

The Parliamentary Ombudsman's *Annual Report* for 2003-04 noted that the introduction of the new Child and Working Tax Credits system by the then Inland Revenue (now HM Revenue and Customs) had been marred by significant technical problems which had led first to delays in payments, and then created other problems when the Revenue tried to remedy the situation.

At the end of the year, while for the vast majority of tax credit recipients the system appeared to be working reasonably well, there remained concerns, for families on low incomes in particular, in respect of the treatment and recovery of overpayments of tax credits arising both in-year and at the year-end. Although those cases only represented a small proportion of the six million families receiving tax credits, it was nevertheless clear that a significant number of families were affected and that the level of financial hardship and distress being caused to some was considerable.

The Revenue assured us that the initial difficulties were only teething problems, which would be resolved as the new IT bedded down and staff became more experienced in operating the new system, and as both staff and customers became more familiar with the new rules. Nevertheless, we undertook to watch closely how the Revenue dealt with situations arising which caused hardship to families, and also to identify if complaints threw up wider issues about the systems and processes that needed to be addressed.

A year on it is clear that the Revenue's assurances were over-optimistic. Complaints about tax credits have continued to rise, and in the 2004-05 business year we received 216 complaints, which represented almost a tenth of all cases referred to the Parliamentary Ombudsman.

In the light of this, and the fact that reports from MPs suggested that the complaints we were seeing were only the tip of a much bigger iceberg, we presented a special report to Parliament in June 2005, *Tax credits: making things better* (HC 124). That report did not suggest that the new tax credits system was in general disarray; on the contrary it recognised that, given the scale of the undertaking, its introduction had been broadly successful. However, the new system had also created fresh challenges for the Revenue as it brought them a new group of customers, namely the key groups intended to benefit from the tax credit reforms: poor families with children and low income earners. These people rely on the payments made by the Revenue as an essential part of their family income.

By drawing on the experiences reflected in the complaints referred to us, the special report charted the customer experience for that particular group of tax credit recipients and made 12 recommendations to improve the system. They covered the way in which the Revenue deal with overpayments, communication with customers, the steps to be taken to reduce the risk that customers will suffer financial hardship, easier and quicker customer access to Revenue staff who can address problems and queries, and prompt and efficient complaint handling. We also recommended that consideration should be given to writing off all excess and overpayments caused by official error during 2003-05.

However, the report also raised wider and more fundamental issues for the Government and Parliament to address, about whether a financial support system which included a degree of inbuilt financial uncertainty could truly meet the needs of low income families.

We are particularly concerned that these key issues should be addressed before the Revenue transfer over into the system, later this year, the 800,000 families who currently receive their Child Tax Credit through Jobcentre Plus.

## Freedom of Information - securing a smooth transition

The Ombudsman was responsible for policing the Code of Practice on Access to Government Information (the AOI Code) between 1994 and 2005 and the Code of Practice on Openness in the NHS (the NHS Code) between 1995 and 2005. When the Freedom of Information Act 2000 (the FOI Act) came fully into force (from January 2005) responsibility for handling complaints about access to government information transferred to the Information Commissioner.

In the period when we were responsible for policing the Code we explored many of the key issues that arise in the consideration of freedom of information. These included difficult issues such as the public interest test, class exemptions, and the most effective way of releasing information. We established basic good practice for the handling of information requests, and we upheld the importance of following the spirit, rather than simply the letter, of the Code.

In the run-up to the transfer of responsibilities, the Office developed a close working relationship with the Information Commissioner's Office (ICO), and sat on the Advisory Committee set up to oversee the implementation of the FOI Act. We agreed transition arrangements with the Information Commissioner under which the Office handled all complaints about the Code received before 31 December 2004. We then successfully completed all outstanding complaints by the end of March 2005. This was a demanding task, and it is greatly to the credit of the staff involved that this target was achieved despite a number of contentious and sensitive cases.

The number of complaints made under the AOI Code reached its highest level in the period between April and December 2004. In this final operational year of the AOI Code, we issued 63 investigation reports. This record number of complaints mainly resulted from the media publicity around high profile issues, including legal advice for the Iraq war, and greater awareness generated by the publicity about the move to the FOI Act.

In contrast, there was very little interest in, and awareness of, the NHS Code throughout the entire period of its existence. The Office only carried out three such investigations, all of which were completed in 1996.

In July 2003, at the Ombudsman's instigation, the Cabinet Office agreed and published a Memorandum of Understanding under which government departments were reminded how they should deal with requests for information made under the AOI Code and how they should respond to the Office once an investigation had been initiated. This helped to achieve improvements in the operation of the Code itself and in the timeliness of the investigations that took place during the 19 months that the Memorandum of Understanding was in operation. We are pleased to report that two thirds of departments responded in full accordance with the Code.

The Office's policing of both Codes between 1994 and 2005 played a substantial part in changing for the better the way in which the organisations over which we have jurisdiction behave when approaching the question of freedom of information.



**Figure 6**  
**Access to official information complaints 2004-05**

Bodies complained about	Work in progress at 1.4.04	New cases	Total
Arts Council England	0	1	1
Cabinet Office	3	5	8 <sup>a</sup>
Charity Commission	1	2	3
Coal Authority	1	0	1
Commission for Social Care Inspection	1	2	3
Department for Culture, Media and Sport	1	2	3
Department for Education and Skills	1	0	1
Department for International Affairs	1	0	1
Department for Transport	0	1	1
Department for Work and Pensions	0	1	1
Department of Health	2	3	5
Department of Trade and Industry	1	5	6
Export Credits Guarantee Department	1	0	1
Foreign and Commonwealth Office	3	4	7
HM Treasury	0	1	1
Home Office	3	4	7
Inland Revenue <sup>b</sup>	0	1	1
Land Registry	0	1	1
Ministry of Defence	4	4	8
Office for Standards in Education (OFSTED)	1	0	1
Office of the Deputy Prime Minister	1	1	2
<b>Total</b>	<b>25</b>	<b>38</b>	<b>63</b>

<sup>a</sup> Two of these complaints were against the Cabinet Office and one other department (the Department for Constitutional Affairs and the Department for Trade and Industry respectively).

<sup>b</sup> The Inland Revenue became part of the new HM Revenue and Customs Department on 1 April 2005.

The case of Mr C and the Child Poverty Action Group demonstrated the importance of ensuring that staff were aware of the need to follow Code procedures when considering a request for information – see opposite.

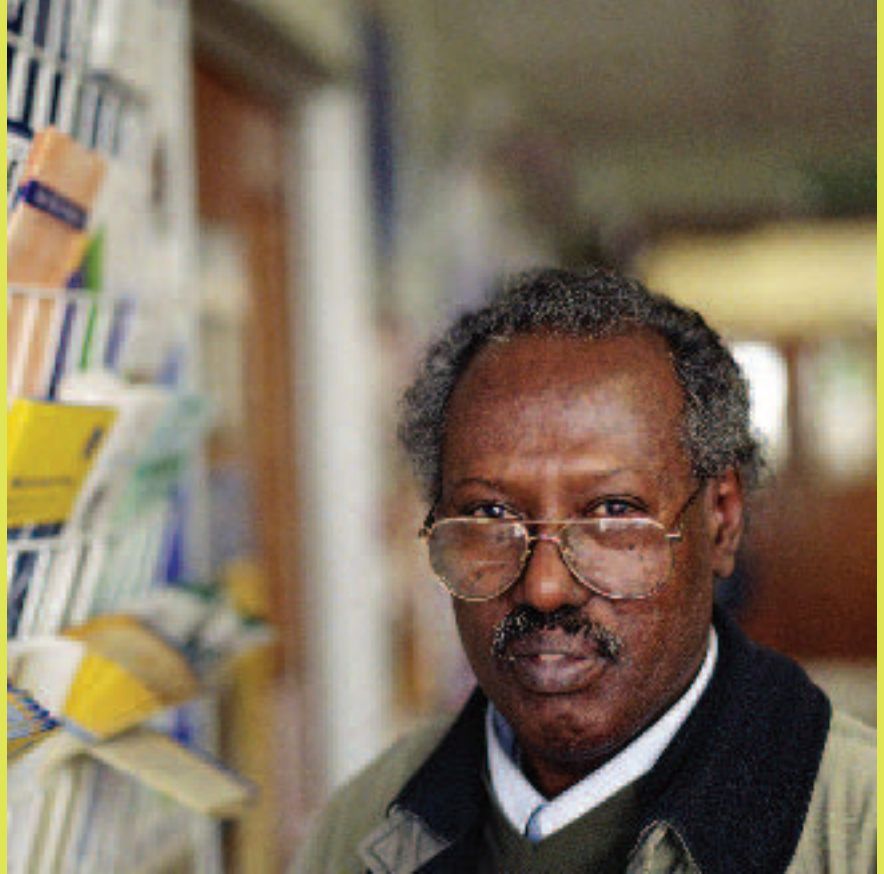
We regret to report that delays in responding to the Office were a feature of just over 25% of AOI investigations, and mainly involved the Cabinet Office and the Home Office. However, other departments were also responsible for lengthy delays. Our investigation into a complaint about the Department of Health's refusal to disclose information to Ms B – see page 34 – was held up by a total of 32 weeks owing to delays on the part of the Department.

The lessons learned from our extensive experience of investigating complaints about a denial of access to information were shared in *Access to Official Information – monitoring of the non-statutory codes of practice 1994-2005* (HC 59), a report to Parliament based on our ten years of regulating the AOI and NHS Codes. The report looked at the Office's stewardship of the Codes under three successive Ombudsmen, including some of the major cases that the Office dealt with, and highlighted key lessons about the operation of the AOI code.

Case Study

→ Ref A29/03 Mr C

## Following AOI Code procedures ensuring staff are trained to follow the Code



When incapacity benefit replaced invalidity benefit Mr C continued to receive his benefit under the relevant Regulations. Following a divisional court judgment in another case, the Department for Work and Pensions (DWP) proposed to amend a specific regulation of the Social Security (Incapacity for Work) (General) Regulation 1995. DWP described the effect of the proposed change to the Social Security Advisory Committee as 'neutral', meaning that no one would lose or gain by it. However, when the amended regulation came into force, Mr C failed to satisfy the new provisions and his entitlement to incapacity benefit ceased.

In correspondence with the Child Poverty Action Group (CPAG), acting for Mr C, the then Permanent Secretary of DWP said that she was satisfied that there was no reason to believe that officials had deliberately set out to mislead the Committee. CPAG asked to see copies of the evidence she had examined but DWP declined to provide it. CPAG sought a review of that decision and DWP maintained their refusal, eventually citing Exemption 2 of the AOI Code, which exempted from disclosure information that fell into the category of internal discussion and advice. DWP also said that they had considered whether or not the harm likely to arise from disclosure outweighed any public interest in making it available, and had concluded that it did.

Following the Ombudsman's intervention, DWP accepted that they should have informed CPAG earlier of the Code exemption on which they were relying, of the possibility of a review and of subsequent access to the Ombudsman. They undertook to remind their staff of the need to follow Code procedures. The Ombudsman found that, while Exemption 2 could be applied to some of the information withheld, it could not be applied to all of it. DWP agreed to release some of the information sought by CPAG. The Ombudsman partially upheld the complaint.

Through our investigations, information not previously made available has, rightly, found its way into the public domain. This has sometimes been achieved through a frustrating and difficult process. But the Office's policing of both Codes between 1994 and 2005 played a substantial part in changing for the better the way in which the organisations over which we have jurisdiction behave when approaching the question of freedom of information.

## Significant complaints

We deal with a large number of departments about a very broad range of issues which do not fit neatly into categories and cannot be grouped under particular themes. Among the complaints we investigated last year were several that raised important issues which affect many people. Among the significant cases were two involving

vulnerable or disabled people: those unable to manage their own affairs and war pensioners.

### Public Guardianship Office

The Public Guardianship Office (PGO) is the administrative arm of the Court of Protection which is responsible for protecting and managing the property and affairs of people who, through mental incapacity, are incapable of managing them themselves. Where the Court is unable to appoint a suitable Receiver,

#### Case Study

→ Ref A13/03 Ms B

## Responding to the spirit of the Code in handling AOI requests



Ms B had asked the Department of Health for a number of pieces of information relating to the award of a contract to Powderject Technologies PLC to supply a stock of smallpox vaccine. She then asked 17 Government Departments, including the Department of Health, for information relating to contacts between their respective Ministers and representatives of Powderject. Finally, she asked the Department for several pieces of information relating to the work of the sub-group of the Joint Committee on Vaccination and Immunisation, which had given advice on the choice of the particular smallpox vaccine strain. The Department declined to release most of the information requested by Ms B, citing a number of AOI Code exemptions in justification.

After a protracted investigation, beset by Department of Health delays, the Ombudsman recommended that almost all the information sought by

Ms B should be released. Following a further exchange of correspondence, the Department agreed to the release of information which had already entered the public domain but either refused to address the remaining recommendations or refused to release the information recommended for disclosure.

The Ombudsman criticised the manner in which the Department had handled Ms B's information requests and for their failure to engage effectively with her own investigation. The Permanent Secretary at the Department of Health subsequently wrote to the Ombudsman agreeing to release further pieces of information recommended for disclosure, but again failed to address all the outstanding matters.

The Department subsequently provided Ms B with some, but not all, of the information sought.

it can appoint the Chief Executive of PGO to act as a Receiver of last resort. In those circumstances, the client's affairs are assigned to a caseworker in PGO's Receivership Division.

In one case we found that there had been widespread failings in the PGO's management of the financial affairs of Ms A (C1854/03) and that its handling of her affairs had fallen well below the standard that she had a right to expect. Although Ms A had a life interest in a trust fund worth over £500,000, her next of kin was told she was short of money. PGO failed to take into account the financial resources available to her at the discretion of the Trustees when assessing her needs, which therefore impacted on the quality of life that she could have been able to enjoy. After four years of contact with the PGO, Ms A's next of kin managed to get an audit into her affairs which revealed that the PGO had mismanaged her money since 1991. The Ombudsman criticised the PGO strongly for its handling of the case and described the tone of some of the PGO comments about Ms A's plight as 'staggering in their arrogance.'

Compensation was paid to both Ms A and her carer. The complaint sparked an investigation of 1,100 other cases by PGO. That led to payments of thousands of pounds to 97 other people, who had lost money in similar circumstances, and to fundamental changes within the PGO's office which will have a significant and beneficial impact for many other vulnerable people.

Another complaint about the wrong interpretation of the appeal rules – see box above right – has implications for a number of war pensioners. The Veterans Agency (part of the Ministry of Defence) agreed to consider whether there are wider implications

Case Study  
→ Ref C328/03 Mr S

## Interpreting legislation with care in considering statutory time limits for appeals

In 1993 Mr S claimed a war pension. The Veterans Agency assessed him as 1-5% war disabled which did not entitle him to the pension. In 1996 they increased his assessed disablement to 6-14% which again did not entitle him to a pension. In 1997 Mr S appealed. In 2000 the Pensions Appeal Tribunal allowed his appeal, increasing his disablement to 30% backdated to January 1993 (the date of his original claim). The Veterans Agency awarded a war pension but backdated it only to January 1997, the date of the appeal. The Agency said this was because Mr S had not appealed within a period of six weeks of them sending him an appeal form.

Mr S complained to the Ombudsman that his appeal would not have been necessary if the Veterans Agency had not decided his original claim on incorrect evidence and that he had not been warned about the six-week time limit for making an appeal.

Initially the Ombudsman's Office did not uphold Mr S's complaints. However, the case was examined further and, after taking legal advice, the Ombudsman found that the Veterans Agency had misinterpreted the legislation relating to the statutory time limit for appeal. The statutory time limit was 12 months and Mr S had appealed within that time. The effect of the six-week rule was to extend this period in certain circumstances.

After lengthy correspondence and discussions, the Veterans Agency agreed with our interpretation of the legislation and paid Mr S arrears of war pension from January 1993. They also apologised and awarded him a consolatory payment of £500 in recognition of the gross inconvenience he had been caused.

that need to be addressed and we are committed to following this up.

### Pension schemes

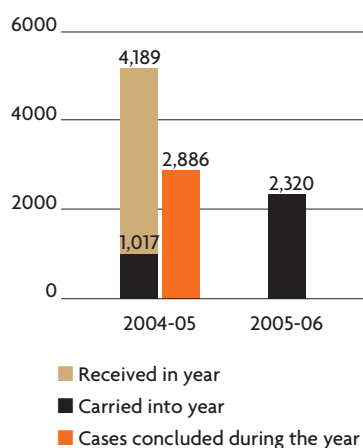
During the year a consultation exercise was conducted to determine whether there should be a further investigation of the prudential regulation of Equitable Life, which included responses by 1,603 members

of the public, 21 interested parties, and 211 MPs – as a result of the consultation, the Ombudsman decided to carry out a further investigation. This is continuing and good progress has been made. A second investigation into the security of final salary occupational pension schemes is also progressing well.

# Working differently

This has been a challenging year as we have seen a substantial increase in the number of complaints. This year we accepted 4,189 new cases for investigation, a rise of 988 (30%) on 2003-04.<sup>1</sup> Including the 1,017 cases in progress carried over from last year, our total workload for 2004-05 was 5,206 cases. Figure 7 shows the volume of casework in 2004-05 and work in hand carried over into 2005-06.

**Figure 7**  
**Workload – cases carried into year, new cases accepted for investigation and cases concluded<sup>a</sup>**



<sup>a</sup> Figures presented reflect the new way of recording our workload and are not comparable with previous annual reports.

Although we concluded 2,886 cases this year, the rise in the number of new cases accepted for investigation meant that we began 2005-06 with 2,320 cases in hand. This represents a major challenge and we have put in place a number of measures – outlined later in this chapter – to help us respond to it.

### Trends in our workload

In addition to investigating complaints we handled 11,689 enquiries and requests for information. Enquiries include complaints which we cannot investigate because they are not within our jurisdiction or are premature, for example because they have not been referred by a Member of Parliament or have not been considered locally under the NHS complaints system. The number of enquiries was substantially lower this year – down almost 33% on the 15,515 we received last year.

Complaints about continuing care remained a large but declining proportion of our health workload this year. Complaints about the work of the Department for Work and

Pensions remained high – we received 861 cases this year compared to 821 in 2003-04. An increase in complaints about the work of HM Revenue and Customs (formerly the Inland Revenue), and in particular tax credits, added to our caseload.

### Responding to customer needs

As we signalled in our last *Annual Report*, this has been a year of significant change for the Office. We started in March 2004, by commissioning a major piece of research amongst our stakeholders to identify what each thought we did well, could do better and should focus on in the future. To ensure its independence and the openness of the findings we commissioned MORI to undertake this work on our behalf. The research involved workshops with complainants, complaints handlers across government and the NHS and the Public Administration Select Committee, in depth interviews with permanent secretaries, chief executives of NHS bodies and voluntary groups and surveys of Members of Parliament and our own staff.



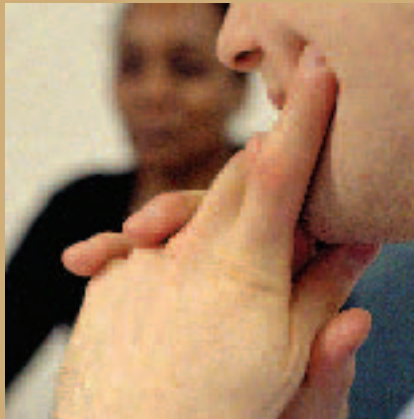
This research, conducted in June 2004, revealed widespread agreement amongst the public and the advice community that they wanted the Ombudsman to be more pro-active in initiating investigations and ensuring our recommendations are implemented. In addition, complainants told us that we needed to communicate better and more regularly with them and tailor our investigations to suit the individual complaint, rather than applying a standard approach to all complaints. They did not understand the distinction, reported in previous annual reports, between complaints which were 'investigated' and those which were not – when both types of case involved making enquiries, gathering significant amounts of evidence and reaching a carefully considered and fully justified decision. Of particular concern to us was the suggestion that complainants did not believe that we were impartial. In particular they referred to our practice of sharing the drafts of decisions with bodies complained against, but not with them.

Not surprisingly there were differences between the views of our stakeholders. We carefully reviewed all the evidence and drew up our new role and purpose statement, which is set out at the beginning of this *Report*.

### Developing our new approach

We then used our role and purpose statement to completely reengineer our approach to complaints handling, with the support of a specialist change partner, Ashridge Consulting. Throughout the year we encouraged teams to experiment with new, tailored and more customer-focused ways of working, which we evaluated. The outcome is our new complaints handling approach – implemented from 1 April 2005 – which we believe

## Our new approach in practice



'Initially I had experienced some difficulty compiling the (Disability Living Allowance) claim but despite being busy Mr B (from the Ombudsman) took the time and trouble to talk me through the procedure and clarify the criteria. This was of enormous help as it enabled me to direct my complaint appropriately and gather my thoughts.

Having experienced a very difficult and traumatic time we felt a little apprehensive about his visit to our home.

However he handled the situation with great sensitivity and his friendly manner soon put us at ease. His interpersonal skills enabled us to talk freely, cover some contentious issues without offence, and look at certain matters from a different point of view.

Having been given the opportunity to meet and discuss the case at length we felt an utter sense of relief.

We were very impressed with his outstanding knowledge of the lengthy and complex file ... He was also able to advise us on the areas he was unable to cover.

When he left my sister and I felt extremely lucky that he had been assigned to our case and felt that whatever the outcome his findings would be both fair and impartial.

Throughout the investigation, which has spanned a number of months, he has been totally professional. He has kept us informed of his progress and we are extremely happy with everything he has achieved on our behalf.' (Ms C, complainant)

will achieve significant improvements for both complainants and bodies complained about.

During the year we also specified, procured, developed and successfully implemented a new case management system. The system was developed to reflect our new complaints handling approach. It will enable us to report on casework trends and provide high quality

management information to help in managing our workload and reporting accurately on our performance. The system was delivered on time and under budget and has been well received by staff.

Under the new approach, when we decide to investigate a case, we now make no distinction between a formal investigation and a complaint dealt with less formally. Throughout our investigation there is more emphasis on dialogue with the complainant, to ensure we understand what complainants are seeking at the outset and to ensure they are aware of progress with their case.

We develop a plan for each complaint which reflects the most effective way of achieving resolution of that complaint. Where we can use informal methods to achieve a satisfactory resolution, we will take that route. In all cases we now share the drafts of our final decisions with complainants as well as with bodies complained against, subject to the rules of natural justice.

The new approach also involves more regular contact with complaint handlers – those people in the NHS and government departments who handle complaints about services. In response to their concerns we will keep in closer contact with them, checking not only facts and evidence with them, but also sharing our analysis and recommendations – giving the organisations involved an opportunity to comment on the feasibility of any recommendations we make.

As our complainants have pointed out, a complaint is not resolved for them until any recommendations have been implemented. Accordingly we will now not close the case until we are sure appropriate action has been taken and the complainant informed.

Underlining our customer-focused approach, we have also introduced a new internal complaints procedure for customers who want to complain about our service. The new procedure aims to provide an accessible, simple and transparent complaints process, which allows us to respond quickly to complaints, learn from them and provide appropriate redress if we have made a mistake.

While much has changed, the key foundations of our complaint handling approach remain constant. We continue to be independent, impartial, robust and evidence-based in our findings. We are clear that we are not advocates for the complainant or apologists for government or the NHS. We will seek outcomes that are justified by the evidence and we remain committed to giving all parties to a complaint a fair hearing.

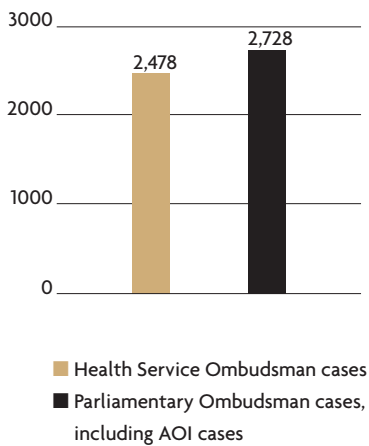
Finally, as our new role and purpose states, we are committed to sharing the learning from complaints to help improve public services. As the previous sections of this *Report* show, we have already made some progress in this. During this year we will be using the information from our new case management system and working hard on developing knowledge sharing within our Office to identify the individual and systemic issues and learning more systematically.

### Introducing new measures

Our decision to describe all of the complaints on which we undertake investigatory activity as investigations – rather than distinguishing between ‘statutory’ investigations and others – has significant implications for the way we measure and report on our work. However, for the reasons given above, this is largely a presentational change, which will allow us more accurately to represent the real work which goes into dealing with the complaints we receive.

Figures presented in this year’s *Report* reflect this new way of categorising and recording our workload and mean that the statistics are not readily comparable with previous annual reports. We look forward, in subsequent annual reports, to being able to provide a much more detailed statistical breakdown of our workload, trends, the number of complaints upheld, and about the characteristics of the people who complain to us.

**Figure 8**  
**Workload –**  
**by jurisdiction 2004-05<sup>a</sup>**



<sup>a</sup> Figures include cases carried over from 2003-04.

**Figure 9**  
**Service performance - time taken to process enquiries<sup>b</sup>**

	Target	Result
Deal with general enquiries, by post or email	Within 5 days	100% achieved
Acknowledge all other correspondence	Within 2 working days	100% achieved
Decide whether we can investigate	Within 10 working days	100% achieved
Acknowledge complaints about our own service	Within 2 working days	100% achieved

<sup>b</sup> Performance targets published in the 2004 *Business Plan*.

**Figure 10**  
**Service performance - time to decision<sup>b</sup>**

	Target	Result
Complaints to the Parliamentary Ombudsman	0-3 months 80%	61.7%
	0-6 months 85%	86.1%
	0-12 months 95%	<b>94.9%</b>
Complaints to the Health Service Ombudsman	0-3 months 30%	30.3%
	0-6 months 60%	62.3%
	0-12 months 80%	<b>86.8%</b>

<sup>b</sup> Performance targets published in the 2004 *Business Plan*.

### Meeting targets

At the start of the year we recognised that, if we were to engage staff fully in the change programme, we should expect to complete between 5-10% fewer complaints in the year. We published our service standards for complainants and have measured ourselves against them.

We are pleased to report that we dealt with the 11,689 enquiries<sup>1</sup> and requests for information within our target response times.

We also reached decisions on 2,886 cases compared with 2,895 last year. Given the time spent on developing and introducing the new complaints handling approach, and in ensuring

staff awareness and support, this represents a significant achievement.

We have done much to improve turn around times in recent years. For 2004-05, we produced a set of simple, clear operational targets based on the length of time it takes for a case to be completed: that time is measured from the time we receive the complaint until we reach a decision. This is the first time we have measured performance in this way, and we believe that these changes will make our targets easier to understand and our performance easier to measure and assess.

During the year we reached a decision on 94.9% of Parliamentary

cases within 12 months (against a target of 95%) and exceeded our target for Health Service complaints – reaching a decision for 86.8% of cases (target 80%). In view of this performance we are increasing this target to 90% for 2005-06.

We met all our service standards with the exception of our aim of completing 80% of Parliamentary complaints within three months. Due to the significant increase in the number of complaints we have received we have not been able to allocate complaints immediately to an investigator, but have actively managed them.

<sup>1</sup> In 'enquiries' we include cases which are not within our jurisdiction or which are premature and need to be referred to another body.

We are very concerned that we have a large and growing number of cases awaiting investigation. To help deal with this situation we are managing incoming complaints so that new complainants understand more fully what is happening to their complaint. Each complaint is assessed on arrival by a senior member of staff and those which are urgent are given priority and allocated to an investigator. We write to everyone else and tell them about the likely wait. In addition we give everyone the name of a contact person to answer any questions and update complainants, every six weeks, on progress. While complaints are waiting for allocation, we collect the information necessary so that the investigator can start analysing the complaint on receiving the case.

During the year, as the number of complaints began to increase significantly, we undertook a major recruitment exercise. Between November 2004 and January 2005 16 new investigators joined the Office. As they complete their training we will be able to start reducing our workload. In addition we engaged 24 self-employed associate investigators, who perform the same function as senior investigators, to help us deal with peaks in the workload.

Given the increase in our workload, maintaining our targets at this level will require significant improvement in our performance in the year ahead but we are committed to maintaining and trying to meet these standards.

### **Identifying systemic issues**

As we explained earlier, improved knowledge management will help us to highlight themes which might require the use of subject-based or other specialist teams to carry out broader and longer-term investigations. By being able to identify systemic issues as they emerge, we can be alert to problems and work with departments to resolve them before they have a major impact on service delivery.

Our Equitable Life Team has proved an effective way of managing a highly specialist group of complaints. Similarly the creation of our Continuing Care Team has enabled us to develop a strategic and effective approach to the handling of these complaints. This experience has led us to restructure our handling of mental health and primary care NHS complaints along subject-specialist and multi disciplinary lines. This restructuring should also help us to focus more sharply on identifying systemic issues and effective ways of dealing with them.

### **Developing our workforce**

We could not have initiated and carried through this amount of change without involving and supporting staff and managers. During the year we completed the implementation of our workforce strategy, including continuing our restructuring to one level of investigator, recruiting and training new investigators and associate investigators.

Other key priorities have been the delivery of significantly improved induction for new staff and the commencement of a new leadership and management development programme.

### Improving accessibility and communications

During the year we have developed a more high-profile and active approach in reaching out to the public and to groups most at risk in the event of failures by public services. For example, we have rewritten our literature and restructured and redesigned our website to make it easier for complainants to understand our services and find the information they need. In this way we aim to ensure that people who need our service know how to complain to us, that they are aware of the actions we take and of the lessons highlighted by our work.

We have taken, and continue to take, a more pro-active stance in developing our relationships with MPs, with advisers, and the bodies which fall within our jurisdiction. We have also worked more closely than ever before with the Local Government Ombudsman, other ombudsman services, with complaint handlers, and a wide range of regulatory and inspection bodies. These relationships are invaluable in helping us to identify and promote good practice and in ensuring, as far as possible, that all relevant bodies involved in promoting good administration have a shared and coordinated approach to complaint handling issues.

### Building on our achievements

Throughout the year we have made good progress towards achieving our aim of providing a modern, accessible complaints service.

In particular we have implemented a new workforce strategy, developed and introduced a new case management system, and successfully trialled experimental teams, such as the Continuing Care Team – which will now be carried forward into 2005-06.

In addition we have developed and embedded new governance, risk management and internal control systems. We have carried out a significant upgrade of our information technology capabilities – addressing the under-investment in the Office's capital structure in previous years. This is work in progress and we now have a four year capital investment strategy to support ongoing investment in these key areas.<sup>1</sup>

During 2005-06 we will be focusing on ensuring that our customers and stakeholders reap the benefits of these major changes and developments in our service delivery. We will embed our new complaints approach, work to improve our productivity and develop our knowledge sharing. We will seek to make our office accessible to all those who need us and to disseminate our learning as widely and effectively as possible to help the improvement of public services.

<sup>1</sup> For full details of the Office's income and expenditure see the *Resource Accounts 2004-05* (HC 347).



# Ensuring good governance and leadership

The Board as at 1 June 2005



**Ann Abraham**  
Parliamentary and Health Service  
Ombudsman



**Trish Longdon**  
Deputy Ombudsman



**Bill Richardson**  
Deputy Chief Executive



**Peter Chivers<sup>2</sup>**  
Director of Strategy



**Philip Aylett<sup>2</sup>**  
Director of Communications



**Andrew Puddephatt**  
Audit Committee Chair



**Tony Redmond**  
External Board Member



**Cecilia Wells**  
External Board Member

The post of Parliamentary and Health Service Ombudsman comprises two statutory roles – Parliamentary Commissioner for Administration (PCA) and Health Service Commissioner for England (HSCE)<sup>1</sup>.

The Ombudsman has sole responsibility and accountability for all the work of the Office and the decisions that it takes. PHSO's non-statutory advisory Board, appointed last year, advises and supports the Ombudsman in providing leadership and good governance, as set out in the Office's Governance Statement, and brings an external perspective to assist in the development of policy and practice.

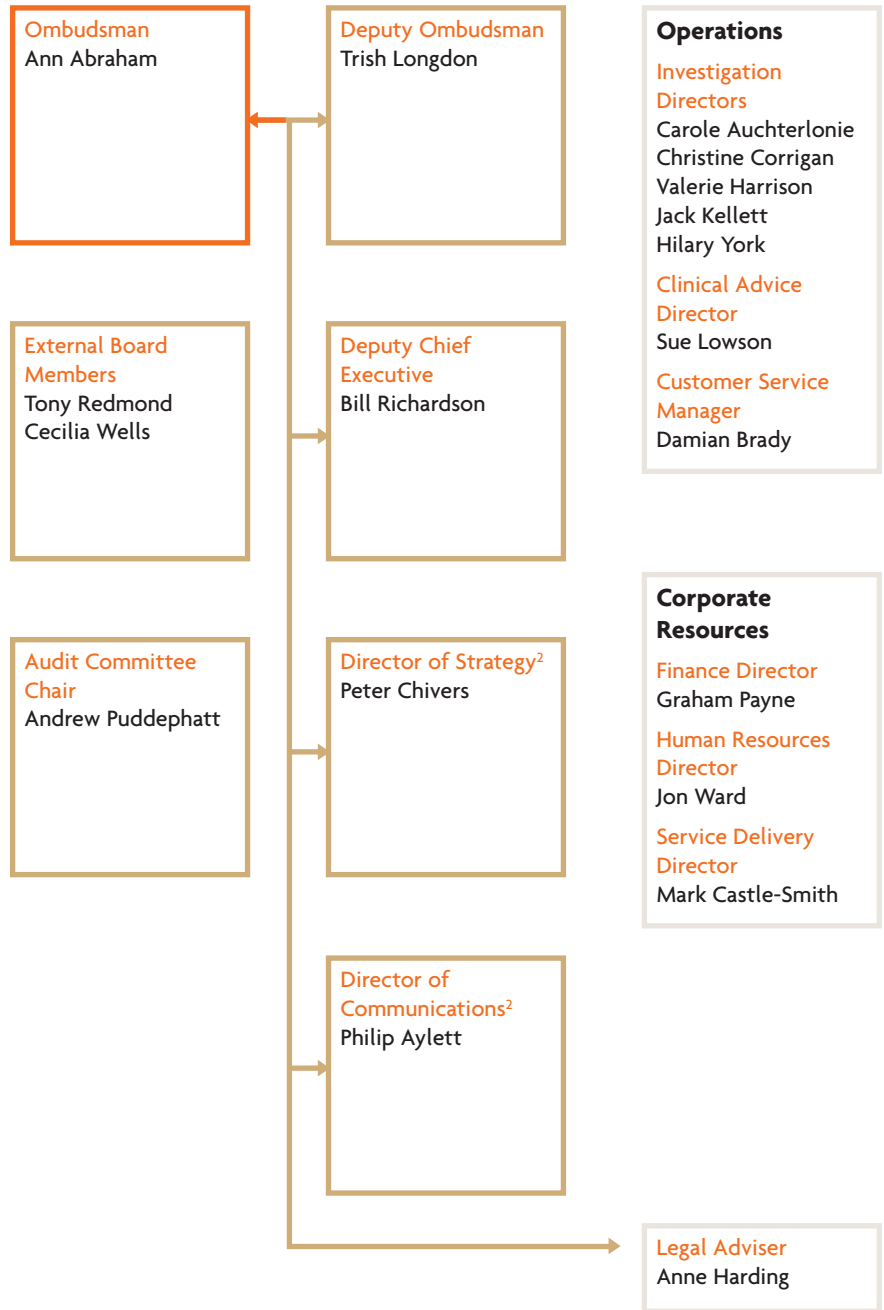
**The Board**

The Board provides advice and support on:

- purpose, vision and values;
- strategic direction, planning and risk management;
- accountability to stakeholders, including stewardship of public funds;
- internal control arrangements.

**The Audit Committee**

The PHSO Audit Committee supports the Ombudsman (as Accounting Officer) and the Board in monitoring the adequacy of the Office's corporate governance and control systems. The members of the Audit Committee are the Ombudsman (as Accounting Officer) and three external members, including the Chair, Andrew Puddephatt.



<sup>1</sup> The Ombudsman's powers are set out in the Parliamentary Commissioner Act 1967 and the Health Service Commissioners Act 1993.

The Office's Governance Statement is available on the website at: [www.ombudsman.org.uk/about\\_us/governance/governance\\_statement.html](http://www.ombudsman.org.uk/about_us/governance/governance_statement.html)

The Ombudsman accounts to Parliament for the activities of the Office through a statutory *Annual Report*. Separate *Resource Accounts* are also published. Copies of the *Resource Accounts* are available from TSO, see back cover for details.

<sup>2</sup> Sarah Sleet, Director of Strategy and Communications, left on 28 April 2005. To help develop the Office's strategic planning and communications expertise, two temporary posts have been created. Peter Chivers became Director of Strategy on 1 May and Philip Aylett joined as Director of Communications on 6 June.

# Looking to the future

Our aims and objectives for 2005-08 are:

## Aims

## Objectives

To deliver a high quality complaints handling service to customers.

To deliver a high quality service based on understanding our customers' needs and making our service accessible to all who need it.

To maintain a high quality service by anticipating the impact of changes in customers' needs and public service policy and developing our capacity to respond.

To operate a high quality service by developing high performing staff and getting the best from our resources.

To contribute to improvements in public service delivery by being an influential organisation, sharing our knowledge and expertise.

To establish a distinct and recognised role in the administrative justice landscape and regulatory environment.

To be recognised and utilised by others as a source of expertise in good administration and complaint handling.

To be an authoritative voice on delivering systemic change, actively sought out by others.

Four core priorities drive our work:

- improving the quality and efficiency of our complaints handling service;
- developing our capability to share our knowledge and expertise internally and externally;
- developing the availability, accessibility and use of our service, reflecting and understanding the diversity of those who need it;
- creating a dialogue with others to influence improvements in the delivery of public services.

For more information on the Office's strategy and plans for 2005-08 see the three-year *Strategic Plan*, available on the website at [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

Parliamentary and Health Service Ombudsman, Millbank Tower, Millbank, London SW1P 4QP

## About the Parliamentary and Health Service Ombudsman

### The Parliamentary Ombudsman

carries out independent investigations into complaints that government departments and a range of other public bodies in the UK have not acted properly or fairly or have provided a poor service.

### The Health Service Ombudsman

for England undertakes independent investigations into complaints made by, or on behalf of, people who have suffered because of poor treatment or service provided through the NHS.

The Parliamentary and Health Service Ombudsman is completely independent of the Government, the Civil Service and the National Health Service. The Ombudsman's services are available to everyone and are free of charge.

To find out more visit our website at [www.ombudsman.org.uk](http://www.ombudsman.org.uk) or **contact our Helpline on 0845 015 4033** to ask for information or to request a leaflet.

You can also write to us at the address below or email us at [phso.enquiries@ombudsman.org.uk](mailto:phso.enquiries@ombudsman.org.uk)

Parliamentary and  
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Millbank  
London SW1P 4QP

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### Please note

The telephone numbers of the Parliamentary and Health Service Ombudsman changed on 15 March 2009.

The new contact details are:

**Helpline:** 0345 015 4033

**Fax:** 0300 061 4000

Millbank Tower  
Millbank  
London SW1P 4QP

Switchboard: 020 7217 3000  
Fax: 020 7217 4000

Email: [phso.enquiries@ombudsman.org.uk](mailto:phso.enquiries@ombudsman.org.uk)

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