



House of Commons  
Public Administration  
Select Committee

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# Tax Credits: putting things right

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Second Report of Session 2005–06





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Select Committee

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# Tax Credits: putting things right

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**Second Report of Session 2005–06**

*Report, together with formal minutes, oral and  
written evidence*

*Ordered by The House of Commons  
to be printed 12 January 2006*

**HC 577**

Published on 29 January 2006  
by authority of the House of Commons  
London: The Stationery Office Limited  
£11.00

## The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Parliamentary Commissioner for Administration, of the Health Service Commissioners for England, Scotland and Wales and of the Parliamentary Ombudsman for Northern Ireland, which are laid before this House, and matters in connection therewith and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service.

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### Committee staff

The current staff of the Committee are Eve Samson (Clerk), Clive Porro (Second Clerk), Lucinda Maer (Committee Specialist), Anna Watkins (Committee Assistant), Sue Holt (Secretary) and Phil Jones (Senior Office Clerk).

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# 1 Introduction

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1. On 21 June 2005 the Parliamentary Commissioner for Administration (hereafter the Ombudsman) published her report ‘Tax Credits: Putting Things Right’. The report was presented to Parliament under section 10 (4) of the Parliamentary Commissioner Act 1967 which provides for her to lay reports with respect to her functions before each House of Parliament as she thinks fit. There has been a rising number of complaints to the Ombudsman about the Tax Credit Scheme since its introduction. The Ombudsman’s Report investigated the administration of the Child and Working Tax Credits System with particular regard to the impact it has had on low income families. On 20 October 2005 we invited the Ombudsman and HM Revenue and Customs (hereafter the Revenue) to give evidence to us about the implementation of the recommendations contained in that Report.

## 2 The Tax Credits Scheme

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2. In April 2003 the Government introduced Child and Working Tax Credits with the expressed aim of tackling child poverty and encouraging more people into work by providing income related support. In drawing up the new Tax Credits scheme, the Government looked at systems in other countries, in particular, Canada—which has a relatively simple and unresponsive system, with awards based on income from the previous year—and Australia—which has a highly responsive system.<sup>1</sup> The Government concluded that neither model could be replicated precisely in the UK and sought to design a system that steered ‘a course between the two’.<sup>2</sup> It was decided that the UK system would be responsive to changes in circumstance (such as family size, childcare costs and disability); to all falls in annual income; and to rises in annual income of more than £2,500 a year.

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1 HM Treasury and Inland Revenue, *The Child and Tax Working Credits*, April 2002, p 22

2 *Ibid.*



## 3 The Ombudsman's Report

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3. In the introduction to her Annual Report in 2004, the Ombudsman recorded a general concern over "...large scale changes in government services, underpinned by significant IT projects, introduced yet again without abiding by the principles of good administration. Too little preparation time, not enough planning and no piloting..."<sup>3</sup> She also had particular and "...growing concerns [...] about the operation of the new tax credits system, which we have raised directly with the Acting Chairman of the Inland Revenue".<sup>4</sup> In fact, the number of complaints about tax credits has come to represent a rising proportion of her workload, from 3% in 2003-04 to 9% in 2004-05. By July 2005 this had risen further to 23%. When the Ombudsman came to give evidence in December 2004 she told the Committee that she had "been monitoring this [tax credit complaints] very, very closely, but I think we are now starting to pull together what may turn into a special report on tax credits because I think there are big issues there".<sup>5</sup>

4. On 21 June 2005 the Ombudsman duly made her report. She concluded that, while the new tax credits system was not in general disarray, the cases investigated raised concerns about the treatment and recovery of overpayments. It was also clear that a "significant number of families were affected and that the level of financial hardship and distress being caused to some was considerable".<sup>6</sup> The report urged prompt action on the part of the Revenue and made twelve specific recommendations for improvement.<sup>7</sup>

### The key problems

5. The cause of many of the complaints about the tax credit system can be traced to three main factors. First, the awards are annual and therefore "the system has an element of financial uncertainty built into it, sometimes causing significant problems for people who have to plan carefully to manage their family budgets".<sup>8</sup> The system was consciously designed to overpay claimants and made provision for a subsequent adjustment. However, this claw-back mechanism was compounded by numerous clerical and IT errors which led to further demands for recovery of tax credit awards to the detriment of claimants. As Mr (now Sir David) Varney (Executive Chairman, the Revenue) explained to us:

Overpayments are an intrinsic part of the system that Parliament approved .... The expectation was that there would be a million overpayments in the first year of running new tax credits and that would go down to 750,000. The computer problems which have dogged us exacerbated that number.<sup>9</sup>

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3 Second Report of the Parliamentary Commissioner for Administration, Session 2003-04: *Annual Report 2003-04*, HC 702, July 2004, Foreword

4 *Ibid.*, p 2

5 HC 50-i, Q 15

6 Third Report of the Parliamentary Commissioner for Administration, Session 2005-06: *Tax Credits: Putting Things Right*, HC 124, p 5

7 *Ibid.*, p 3

8 *Ibid.*, p 5

9 Q 51

6. Second, the delivery of the tax credits system is designed to be wholly IT-based with minimal, if any, clerical input. Consequently the success of the scheme relied on the near faultless implementation of the IT system which underpinned it. This did not occur. The Ombudsman's report catalogues how what was originally conceived as a more efficient processing system was instead "plagued with significant and extensive technical problems which [...] impeded performance".<sup>10</sup> These included two major software errors. Some 455,000 households received duplicate payments when the system failed to recognise that the manual payment had already been made. There were £45 million of overpayments to 60,000 couples whose change in circumstance led to the second partners having their income zero-rated. In addition there were a whole range of other IT problems affecting the system or surrounding individual cases.<sup>11</sup>

7. Third, and in large measure as a result of this over-reliance on a fully automated IT system, the Revenue has been unable to respond effectively when things go wrong, nor has it taken proper account of the particular needs of individual customers. In this case the financial situation of a significant proportion of that client base was wholly different to that of the taxpayers—individuals and businesses—with which the Revenue has traditionally dealt. The Revenue failed to understand that they were now dealing with a significant minority of recipients for whom regular and accurate payments are vital. As the Ombudsman told us: "I think the difference for me, and this is really, it seems to me, at the heart of it, these are new and different customers and these are not people for whom sorting it all out at the end of the year will do".<sup>12</sup>

## Design and delivery

8. The essence of the scheme is that entitlement is calculated on an annual basis. Initially, awards are based on income for the previous year and current circumstances. A change of circumstances must be reported by the recipient and the award adjusted to reflect this. An end of year reconciliation identifies any underpayment, when a lump sum can be paid, or overpayment. Overpayments are usually recovered by reducing the tax credit award for the following year. However, 'excess payments' identified during a tax year, which, if continued at the same rate, would result in an overpayment at the year end are recovered by in-year adjustments.

9. Overpayments will not be recovered in certain circumstances: where they occurred as a result of official error; where the claimant could not reasonably expect to know they were being overpaid; or where a waiver is applied on grounds of hardship.<sup>13</sup> Additional payments can be made, on request, on grounds of hardship or where there are reasons to think a possible overpayment should not be recovered. These discretionary payments are themselves recoverable in the following year.<sup>14</sup>

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10 HC (2005-06) 124, p 20

11 *Ibid.*, pp 21 et seq. and Appendix C.

12 Q 25

13 HM Revenue, *Code of Practice 26*, pp 8-9

14 HC (2005-06) 124, p 17

10. This complex system is predicated on the assumption that the recipient must take responsibility for their own claims. It also assumes what the Ombudsman terms a “savings buffer” to smooth out any over or under payments which is far removed from the financial reality of many families in receipt of tax credits.<sup>15</sup> Mr Varney conceded that the Revenue was not looking at changing the balance of responsibility between the client and the Revenue:

What we are looking at is whether we can improve the way in which the information is presented, the clarity with which it is presented and to eradicate duplicate notices, to see whether it is possible to provide a story of what is happening in a coherent way. That is to enable the individuals to better fulfil their responsibilities.<sup>16</sup>

11. However, the Ombudsman is unconvinced:

For me one of the interesting areas is the difference in perspective perhaps that we have around what is the major problem. The cases we are dealing with primarily are about official error. When we talk to the Revenue they seem to be talking about customer error. Making that fit together I think is going to be quite interesting. There is almost a sense that if customers can be supported in notifying changes of circumstance and understanding the implications of not doing so that somehow it will come right. I am not so sure about that.<sup>17</sup>

12. We agree. Moreover if the customer is to be expected to exercise their responsibility effectively then the information they are given must be clear, straightforward and readily understandable. The Ombudsman notes that central to many of the problems with the scheme is the multiplicity and sheer unintelligibility of award notices which make it impossible for customers to work out their entitlement.

13. The Revenue explained to us it will introduce changes to make award notices clearer. Ms Walker (Director of Benefits and Credits) described how the rules governing the scheme were being revised:

What we are looking to do in the review of our code of practice is to be a little bit more explicit about what we expect people to be able check on the information we sent them and what we do not expect them to be able to check.<sup>18</sup>

14. Mr Gray (Deputy Chairman) said it was also the intention to summarise the case history in one place:

...we are looking to provide additional information, with the shorthand-type term of playback, seeking to summarise in one place, on one piece of paper, at the renewal time, ‘Here is the sequence of events and the reasons why we think your entitlement

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15 *Ibid.*, p 58

16 Q 102 [Mr Varney]

17 Q 19

18 Q 101 [Ms Walker]

has changed and, therefore, by implication, why you may in the previous year have had an overpayment or an underpayment'.<sup>19</sup>

However, this will not be possible until the 2007 renewal cycle.

### Fettered discretion

15. At the heart of the case for maladministration lies the fact that automatic recovery of overpayments takes place contrary to the Revenue's own Code of Practice (COP). The Ombudsman states that:

a fundamental unfairness arises where recovery of an overpayment takes place to the detriment of a customer before COP 26 has been considered. Effectively, the Revenue has fettered its own discretion by making an initial determination to commence recovery action, before it has considered the full facts of the case. That is maladministration.<sup>20</sup>

16. She describes a seemingly remorseless system for recovery of overpayments which "is simply part of an automatic rolling mathematical re-calculation of an award by the tax credits computer system to ensure its accuracy at year-end".<sup>21</sup> In fact, as she told us: "There are issues of hardship to consider".<sup>22</sup> Consequently she has recommended a pause between the identification of an overpayment and starting to recover it to provide an opportunity for recipients to challenge the decision to recover overpayments.

17. We are also concerned that the design of the system has led to maladministration being systemic. The Ombudsman set out a clear definition of what systemic maladministration entails:

When we uphold a complaint, it is because we have found maladministration and injustice in that complaint. Therefore, if we uphold substantial numbers of complaints about tax credits, we have found maladministration in a large number of cases. If it is the same maladministration, it is systemic.<sup>23</sup>

18. Mr Varney did not accept that the maladministration was systemic and seemed to find the suggestion of a pause between the identification of an overpayment and recovery impracticable. The Ombudsman had drawn:

...attention to a particular facet of the operation, which was our practice of starting to recover overpayments from continuing situations, without checking whether there is a valid reason why the overpayments should not be repaid and said that constituted maladministration. That caused me real difficulty not because I dispute the right of the Parliamentary Ombudsman to make such a finding but because

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19 Q 106 [Mr Gray]

20 HC (2005-06) 124, p 41

21 *Ibid.*, p 6

22 Q 13

23 Q 69

I cannot accept that it is maladministration to operate a system in the only practical way that will provide an efficient service to protect the public purse.<sup>24</sup>

In fact we are encouraged by the fact that the Revenue does not object to the principle of introducing a pause although it is worried that this can be done without upsetting the stability of its IT system. Mr Varney assured us that “The issue of whether we can introduce a pause and whether that would provide a better administrative and more satisfactory outcome from all perspectives is one we are looking at seriously”.<sup>25</sup>

**19. We welcome the Revenue’s willingness to look at the Ombudsman’s recommendation to introduce a pause before starting recovery of overpayments. However, we are concerned that, not for the first time, a government department, is presuming to define what constitutes maladministration. Moreover the Revenue seems to suggest that protection of the public purse overrides other considerations, including fairness. Public services cannot be designed or delivered without regard to costs but an unfair system, while it may well be cost-effective, cannot be said to constitute good public administration.**

## Inflexible IT

20. The problems identified with the operation of the scheme have been compounded by the fact that some of the solutions which would overcome some of the difficulties are hard to introduce quickly without risking the stability of the IT system. Mr Varney explained that the Revenue was looking seriously at the prospect of introducing a pause between notification of an overpayment and its recovery. However, he warned, “On the computer front, we know it will take until some time next year to get the functionality in. The computer system is stable. Every time we make a change to it I want to be absolutely sure it does not create more problems than it solves”.<sup>26</sup> Similarly when describing the intention to add information in the annual renewal cycles which would summarise the client history of payments, Mr Gray acknowledged that “to automate that process is extremely complex and we will not be able to do that unfortunately for the 2006 renewal cycle. We are looking to have that facility in place in good time for the 2007 renewal cycle”.<sup>27</sup>

21. There is consensus that there can be no quick fixes. The Ombudsman believes:

that given the scale of the problem as described in the report, there are no quick fixes here. I would also say in all seriousness that one of the things that concerns me as a Parliamentary Ombudsman is seeing changes, improvements, new systems brought in in impossible timescales in order to fix problems when actually they need longer than that to fix and that trying to do things in impossible timescales just makes it worse. I think there is something of a long haul here.<sup>28</sup>

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24 Q 53

25 *Ibid.*

26 *Ibid.*

27 Q 106 [Mr Gray]

28 Q 17

22. We are concerned that the IT system which is supposed to enable an efficient delivery of the scheme has in fact been a root cause, first of creating some of the problems which have led to the criticism and complaints about the scheme and then of acting as a barrier to resolving them quickly. Careful consideration needs to be given to the design of future government IT-enabled schemes so that it is the needs of the customer rather than the limitations of the technology which are paramount.

23. Mr Varney wrote to the Chairman about the settlement the Revenue has reached for their claim of compensation from Electronic Data Systems Ltd (EDS) for the problems experienced with the IT system for the Tax Credits scheme. It includes a significant confidentiality requirement which may limit his ability to answer questions. We would be very concerned if such an agreement prevented us, or any Committee, pursuing matters in which we had a legitimate interest. It would be intolerable if accountability could be evaded by entering into a contract with a private provider.

### Understanding the customer

24. The Ombudsman acknowledged in her report that, given the scale and complexity of the project “the introduction of the system was, for the most part, successful”.<sup>29</sup> It affects around six million families. However, as far as the bulk of the problems were concerned “...this is about people on low incomes, usually with children for whom these payments matter in terms of their weekly budget”.<sup>30</sup> In her evidence to the Committee the Ombudsman, commenting on the nature of those most affected by the problems over the system, told us:

I think the difference for me, and this is really, it seems to me, at the heart of it, these are new and different customers and these are not people for whom sorting it all out at the end of the year will do. ... Unless the Revenue really grasps this and puts itself in the position of the people on the receiving end of their award notices and their automatic recovery, then actually I think there are fundamental problems, so that is the challenge for the Revenue, to see this from the other side.<sup>31</sup>

25. The Ombudsman put the problem to us in graphic terms:

It is this shift, I think, towards a full understanding of the customer base and just what it means to be in receipt of one of those notifications in relation to recovery of overpayments, what it means in terms of what you are going to put on the table for tea tomorrow.<sup>32</sup>

26. One consequence of the setting up of the tax credit scheme was the transfer from the Department of Work and Pensions (DWP) to the Revenue of a new group of customers who rely on these payments for their family income and who hitherto had been able to rely on the security and stability of benefits payments. These customers thus bring distinct

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29 HC (2005-06) 124, p 10

30 Q 27

31 Q 25

32 Q 31

needs which the tax credit scheme has to take into account. Mr Varney told us that the sheer scale of the operation, however, made this sort of targeted approach to the most vulnerable recipients almost impossible to administer:

We physically could not operate a system that required us to check every case and see whether there was a reason, either because of official error or because of hardship, why we should write off the overpayments. That is the reality of the system that is dealing with millions of people. The fact is the vast majority of overpayments are properly recoverable.<sup>33</sup>

**27. We are concerned that the consolidation of the tax and benefits systems represented by the tax credit scheme and the consequent transfer of functions from DWP does not appear to have resulted in any assessment on the part of the Revenue about the nature, and the needs, of this particularly vulnerable group among tax credit recipients for whom regular and reliable payment is not a desirable budgeting convenience but a real necessity.**

### Absence of customer support

28. It seems to us that much of the ill-feeling which the tax credit system has generated among recipients, the advisory community, Members and others could have been avoided if appropriate customer support had been available from the start. However, the Revenue's failure to understand the true extent of its responsibilities towards its new clients, and the faith placed on the efficacy of its IT-based business processes, meant that no such support was designed into the scheme. In erecting a complex and at times unintelligible system, it has failed to provide the casework capacity necessary to help and advise recipients when things have inevitably gone wrong. As the Ombudsman states in her report:

Effectively, there is no oversight of the whole of an individual's case—either the different aspects of a case being worked on, or its evolution over time. This leads to a fragmented and inadequate response when a problem arises, with delays in establishing the root cause of a problem and poor communication with customers about what is happening.<sup>34</sup>

Mr Varney conceded that “There is a problem in that the system was not built to have a case work structure in it”.<sup>35</sup> We agree. Worse, the Revenue's ability to reconstruct individual cases and telephone records is ponderous and inefficient. Mr Gray described how:

If an overpayment is disputed and there is a doubt about what exchanges have taken place, part of our procedures for a full investigation, looking into that dispute before we reach a judgment on it, quite often involves calling back the telephone records from the contact centre network and listening to validate what was or was not said.<sup>36</sup>

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33 Q 53

34 HC (2005-06) 124, p 57

35 Q 62

36 Q 95 [Mr Gray]

Mr Varney then clarified that:

This is not gee whiz, Dr Strangelove, press a button and here it comes. There is no digital recording system on this scale that is like that so it requires detective work. It requires obviously the cooperation of people, some of whom will have very clear recollection of when they made the phone call. Other people live busy lives and cannot remember so we have to search.<sup>37</sup>

29. Ms Walker explained that:

We have had problems in terms of having to access telephone calls by physically retrieving tapes and replaying tapes. We are now looking at whether we can digitise those recordings so that they are accessible through the computer system. We are actively looking at whether we can make that easier to check.<sup>38</sup>

**30. It is deeply worrying that a scheme such as this one has such unsophisticated means for reconstructing individuals' records. It is essential that any public service scheme which involves a history of transactions between individuals and a department should have at its base adequate case-handling capacity, whatever technology it uses.**

### Reasonableness test

31. The Code of Practice 26 introduces a test of reasonableness to judge whether an overpayment should be recovered. It states that: "We will not ask you to pay back an overpayment if it arose because we made a mistake and you could reasonably have thought your award was right".<sup>39</sup>

32. The Ombudsman notes however that "in practice, and in contradiction of the Code, excess payments during the tax year (and at the end of the tax year) are recovered by the Revenue as a matter of course, without prior investigation of either of these two key questions".<sup>40</sup> The Revenue has effectively a reasonableness test as to whether the claimant should have known he was being overpaid but it is difficult to discover the accuracy of that information.

33. In his evidence Mr Varney seemed clear in his views about this test: "If your income has gone up by more than £10,000, I would have thought for most people it is reasonable that they should have known of that change of circumstance".<sup>41</sup> He also suggested a further test: "As an accounting officer, I have to make a value judgment about what is value for money and what is fair".<sup>42</sup> The Ombudsman proposed in her report the means by which it should be possible to balance value for money and fairness within the scheme. She recommended that consideration should be given to the adoption of a statutory test for the recovery of excess payments and overpayments of tax credits, similar to the test that is

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37 Q 95 [Mr Varney]

38 Q 96 [Ms Walker]

39 HM Revenue, *Code of Practice 26*, p 8

40 HC (2005-06) 124, p 40

41 Q 92

42 Q 88



currently applied to social security benefits, where a benefit must be repaid if the claimant has misrepresented or failed to disclose a material fact, with a right of appeal to an independent tribunal.<sup>43</sup> Mr Gray confirmed that a review of the reasonableness test was underway:

We are in very active discussions with a whole range of external stakeholders, voluntary sector bodies and so on. We are currently working on seeking to reach conclusions by around the end of the calendar year. In that, we are particularly focusing on whether we can bring rather greater transparency and clarity to the criteria to be used in judging reasonableness.<sup>44</sup>

**34. We welcome the Revenue's review of the reasonableness test and support the need for a solution modelled on the well-established social security benefits.**

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43 HC (2005-06) 124, p 53

44 Q 90

## 4 Conclusion

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35. The Ombudsman's report illustrates in stark terms some of the bad administrative practice which has marred an otherwise well-intentioned government scheme. We must concur with the Ombudsman that resolving these problems will be a long haul. We note that a start has already been made. In her statement on 26 May 2005 on tax credit overpayments, the Paymaster General outlined steps to improve administration and on 5 December 2005 she announced a number of further improvements most of which are due to come into effect over the next 18 months.<sup>45</sup> It is for others in the House to examine the policy behind the scheme. We welcome the fact that the Treasury sub-committee has announced its intention to inquire into the administration of tax credits. For our part we will monitor the Revenue's progress in implementing the Ombudsman's recommendations. We trust too that other government departments will pause and think carefully about the lessons to be learned from this case – and act on them.

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<sup>45</sup> HC Deb, 26 May 2005, col 23WS and HC Deb, 5 December 2005, col 55WS.

## Conclusions and recommendations

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1. We welcome the Revenue's willingness to look at the Ombudsman's recommendation to introduce a pause before starting recovery of overpayments. However, we are concerned that, not for the first time, a government department, is presuming to define what constitutes maladministration. Moreover the Revenue seems to suggest that protection of the public purse overrides other considerations, including fairness. Public services cannot be designed or delivered without regard to costs but an unfair system, while it may well be cost-effective, cannot be said to constitute good public administration. (Paragraph 19)
2. We are concerned that the IT system which is supposed to enable an efficient delivery of the scheme has in fact been a root cause, first of creating some of the problems which have led to the criticism and complaints about the scheme and then of acting as a barrier to resolving them quickly. Careful consideration needs to be given to the design of future government IT-enabled schemes so that it is the needs of the customer rather than the limitations of the technology which are paramount. (Paragraph 22)
3. We are concerned that the consolidation of the tax and benefits systems represented by the tax credit scheme and the consequent transfer of functions from DWP does not appear to have resulted in any assessment on the part of the Revenue about the nature, and the needs, of this particularly vulnerable group among tax credit recipients for whom regular and reliable payment is not a desirable budgeting convenience but a real necessity. (Paragraph 27)
4. It is deeply worrying that a scheme such as this one has such unsophisticated means for reconstructing individuals' records. It is essential that any public service scheme which involves a history of transactions between individuals and a department should have at its base adequate case-handling capacity, whatever technology it uses. (Paragraph 30)
5. We welcome the Revenue's review of the reasonableness test and support the need for a solution modelled on the well-established social security benefits. (Paragraph 34)

# Formal Minutes

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**Thursday 12 January 2006**

Members present:

Dr Tony Wright, in the Chair

David Heyes

Kelvin Hopkins

Julia Goldsworthy

Julie Morgan

Gordon Prentice

Draft Report [*Tax credits: putting things right*], proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 35 read and agreed to.

*Resolved*, That the Report be the Second Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Thursday 19 January at 9.45 a.m.]

## Witnesses

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### Thursday 20 October 2005 (HC 577-i)

**Ms Ann Abraham**, Parliamentary and Health Service Ombudsman,  
**Ms Trish Longdon**, Deputy Ombudsman, **Mr Bill Richardson**, Deputy  
Chief Executive, Parliamentary and Health Service Ombudsman Ev 7

**Mr David Varney**, Executive Chairman, **Mr Paul Gray CB**, Deputy  
Chairman, **Ms Sarah Walker**, Director of Benefits and Credits, HM Revenue  
and Customs Ev 16

## List of Written Evidence

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1	Parliamentary Ombudsman (OMB 01)	Ev 1
2	Parliamentary Ombudsman (Annex)	Ev 5

# Reports from the Public Administration Select Committee since 2005

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## Session 2005–06

Special Report	The Attendance of the Prime Minister's Strategy Adviser before the Public Administration Select Committee	HC 690
First Report	A Debt of Honour	HC 735





# Oral evidence

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## Taken before the Public Administration Select Committee

on Thursday 20 October 2005

Members present:

Dr Tony Wright, in the Chair

Mr David Burrowes  
Paul Flynn  
Julia Goldsworthy  
David Heyes  
Kelvin Hopkins

Mr Ian Liddell-Grainger  
Julie Morgan  
Mr Gordon Prentice  
Grant Shapps  
Jenny Willott

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### Memorandum to the Public Administration Select Committee by the Parliamentary and Health Service Ombudsman (OMBOI)

#### INTRODUCTION

1. I welcome this opportunity to give evidence before the Committee, particularly as it is my first such opportunity to do so since the election of a new Committee. I look forward to the continuation of the productive and helpful relationship that has existed between the Committee and my Office.

2. When I last appeared before the Committee in December 2004, I said that I aimed to provide an accessible, continually improving service that was responsive to the needs of its customers. I also expressed my wish that my Office use its knowledge and experience to contribute to the improvement of public services.

3. This year, my office has made good progress towards these goals. This Memorandum describes how we have performed over the past 12 months and outlines our plans for the future. It also provides a summary of the main themes that have emerged from our casework and updates the Committee on some issues of particular interest.

#### IMPROVING OUR SERVICE

4. In the past year, and for the first time, I published a single Annual Report covering both my work as Parliamentary Ombudsman (which has a UK focus) and as Health Service Ombudsman for England. Also for the first time, before the summer recess the Office's Resource Accounts were laid before Parliament at the same time as my annual report.

5. The year covered by that report and accounts was a year of significant advances in the governance and management of the Office, against a background of increased workload.

#### WORKLOAD

6. The annex to the Memorandum sets out the key highlights of our work last year. The Committee will observe that our workload continues to grow and that there was a substantial increase of approximately 30% in the number of new cases.

7. Nevertheless, we were able to meet almost all of the performance targets we set ourselves. This was a good performance, but we still began 2005–06 with over 2,300 cases in hand, and the number of cases awaiting attention has continued to increase since then.

8. Managing this workload presents a major challenge and we have put in place a number of measures to help us respond to it. We are also keeping in regular touch with those whose complaints are awaiting attention.

#### STRATEGIC PLANNING AND PERFORMANCE MANAGEMENT

9. I am also committed to planning ahead. For the first time, we have developed and published a three-year strategic plan—now matched, I am pleased to inform the Committee, by our first ever three-year financial settlement from the Treasury, subject to Parliamentary approval. This means that we have both a clear strategic direction and the stability in our resources that will allow us to plan the development of our service to meet the needs of our customers and to deliver that service effectively.

10. The three-year strategic plan is already helping us to shape our work better. It sets out our two main aims:

- To deliver a high quality complaints handling service to customers;
- To contribute to improvements in public service delivery by being an influential organisation, sharing our knowledge and expertise.

11. The plan provides a clear set of priorities and a framework for quarterly performance monitoring which enables us to address workload issues as soon as they arise. Supported by better management information, this is helping us to manage our work more effectively. We have also introduced a new approach to handling cases which means that investigators keep in much closer and more regular contact with customers.

12. We also need good information about our customers and what they think of our service, which is why I am carrying out a comprehensive customer satisfaction survey. In the same vein, a revised and much clearer system for dealing with complaints about our own service has also been introduced.

#### AWARENESS OF, AND ACCESS TO, OUR SERVICE

13. Improving the accessibility of our services is also one of the main themes of our strategic plan. A joint survey with the Local Government Ombudsman in 2003 showed low awareness of our service among the population, particularly amongst young people and minority ethnic groups.

14. We aim to increase awareness of our service by, among other things, improving our understanding of, and response to, issues of diversity and equality. We will develop and implement a clear diversity strategy, monitoring the demographic profile of our complainants to ensure that we are reaching those groups who need our service most.

#### THEMES IN OUR WORK

15. As in previous years, a small number of government departments, agencies and other public bodies tend to account for the majority of the Parliamentary cases with which I deal. Similarly, there are a number of recurring themes among the Health cases I investigate. The annex to the Memorandum gives more detail about the types of complaint that I have received.

16. In addition to using my Annual Report to highlight these themes, I believe that it is important to make use of the evidence from our casework to identify systemic or repeated problems with the operation of services and the implementation of policy—and to draw the lessons learned from our work to the attention of Parliament, government and the NHS.

17. During the past year, among other activities, I have published a number of special reports to Parliament which have dealt with such systemic or recurrent issues.

#### CONTINUING CARE

18. Members of the Committee will already know that following publication, in February 2003, of my report, *NHS funding for the long-term care of elderly and disabled people* (HC 399), in which I recommended that the Department of Health should review the national guidance on eligibility for continuing care, making much clearer the situations when the NHS must provide funding and those where it is left to the discretion of NHS bodies locally, we received around 4,000 complaints and enquiries about continuing care.

19. In the light of the ongoing problems revealed by these complaints, I presented a further report to Parliament—*NHS funding for long-term care: follow-up report* (HC 144)—in December 2004. In that report, I recommended that the Department of Health needed to lead further work by, among other things, establishing clear, national, minimum eligibility criteria; improving assessment tools; and supporting training and development.

20. I welcome the fact that, since my further report, the Department of Health has commissioned a “new national framework for the assessment of fully funded NHS continuing care” on which it is consulting. We have also been working closely with the Department and with strategic health authorities (SHAs) to support them in their resolution of the large number of complaints which are still outstanding. We are just completing a useful series of meetings with all SHAs.

#### NHS COMPLAINTS

21. Reform of the NHS complaints system has been promised for many years and has also been a matter of interest for the Committee for some time, with the evidence session devoted to it in January 2004. My concern about the time this reform was taking and the effect of this on users of the NHS led me to publish in March 2005 a special report, *Making things better?—a report on reform of the NHS complaints procedure in England* (HC 413).

22. In that report, I outlined some of the problems caused by the fragmentation of complaints systems—within the NHS, between the NHS and private healthcare, and between health services and social care provision. This—combined with a failure to focus on patient needs, poor leadership and lack of capacity

and competence in complaint handling—has led to a system which makes it difficult for patients to have things put right where they have gone wrong. A truly patient-focused complaints system, to which we are all committed, is still far from becoming a reality.

23. In the report, I urged commitment and leadership from the Department of Health in setting standards to be met by all providers of NHS care and in ensuring the adoption of a common approach to complaints across health and social care. The Department has agreed to my recommendation to develop a new core standard for complaint handling. Working with the Healthcare Commission, we have drawn up a draft standard which seeks to promote complaint handling systems which meet the diverse needs of actual and potential complainants; are simple and clear to the complainant; help to achieve successful outcomes; and demonstrate that positive action has been taken as a result of complaints.

24. I am aware that the Healthcare Commission has a backlog of complaints. We are liaising closely with them at both a strategic and working level to support, as far as we are able, the achievement of their recovery plan.

#### ACCESS TO OFFICIAL INFORMATION

25. In April 2005, after the Freedom of Information Act had come fully into effect, we published our final reports on the operation of the Code of Practice on Access to Government Information—*Access to Official Information, Monitoring of the Non-statutory Codes of Practice 1994–2005 and Investigations Completed July 2004–March 2005*.

#### PROMOTING BEST PRACTICE IN HEALTHCARE

26. During the past year, we worked with patients and with the Society of Cardiothoracic Surgeons of England and Ireland and a range of key healthcare bodies to produce a guide to help surgeons and their teams to communicate the risks of cardiac surgery more effectively to patients. This development has been widely welcomed and we will consider whether this might become a model for similar initiatives in other clinical disciplines.

#### TAX CREDITS

27. Over the past two years, a high proportion of the cases referred to me as Parliamentary Ombudsman has concerned Working and Child Tax Credits; indications received from the Committee, when I last appeared before it, and from other MPs suggested strongly that these cases reflected only a small part of the problems with the system that their constituents had encountered. While I recognise that the new system has created difficult challenges for the Revenue—not least by bringing them new and unfamiliar groups of customers, such as low income earners, especially those with children—I believe that improvements to the system could nevertheless be made.

28. In June 2005, I therefore presented a special report to Parliament, *Tax credits: making things better* (HC124). My report's recommendations covered how overpayments are handled, communication with customers, the steps that should be taken to reduce the risk of financial hardship, the provision of easier and quicker customer access to staff who could address problems and queries, and effecting prompt and efficient complaint handling. I also recommended that consideration should be given to writing off all excess and overpayments caused by official error during 2003–05.

29. The Paymaster General responded to my report in late July, promising improvements to the administration of the system and to the quality of information to claimants. I welcome the Government's assurances. I have also had useful and constructive discussions with the Revenue about the future handling of complaints and I am hopeful that we will see a reduction in cases in due course.

30. For the moment, however, I continue to receive significant numbers of complaints about the operation of the system. Indeed, over 20% of all cases referred to me as Parliamentary Ombudsman in the current business year relate to tax credits. I will continue to monitor the situation carefully and I will keep the Committee and Parliament informed of any developments which have significant implications for my work.

#### “A DEBT OF HONOUR”

31. On 12 July 2005, I laid before Parliament my report of the investigation I had conducted into complaints about the administration of the *ex gratia* scheme for British groups interned by the Japanese during the Second World War.

32. The complaints I had received and investigated related to a decision to introduce a new eligibility criterion—that to qualify for payment under the scheme, a claimant had to have been born in the UK or have had a parent or grandparent born here—many months into the operation of the scheme.

33. I found that the actions of the Ministry of Defence had constituted maladministration in four respects: in the overly quick manner in which the scheme had been devised; in the lack of clarity in the announcement of the scheme; in the failure to ensure that the introduction of the new criterion did not have

an adverse impact in terms of equal treatment; and in the failure to inform claimants that the eligibility criteria had been changed. I recommended that the Ministry of Defence review the operation of the scheme and reconsider the position of those who had been adversely affected by the maladministration. I also recommended that an apology be made to those refused payment and that that regret should be expressed tangibly.

34. The Government did not accept all of my findings and has only agreed to implement the latter two recommendations. This is of considerable regret to me and, being highly exceptional, is a matter on which the Committee may wish to reflect.

35. As a result of this investigation, I also made three more general recommendations about the operation of *ex gratia* schemes. These were related to how schemes are devised and announced, how changes to schemes should be administered and publicised, and how complaints about schemes should be handled and reviewed. I have raised these issues with the new Secretary of the Cabinet and I will take them forward in wider discussions with government as we develop our principles of good administration.

#### BALCHIN CASE AND JOINT WORKING BETWEEN OMBUDSMEN

36. Earlier this month, I published a report on the case of Mr and Mrs Balchin, *Redress in the Round: Remedying Maladministration in Central and Local Government* (HC 475), which revolved around the actions of both the Department for Transport and Norfolk County Council. As such, the complaint was in both my jurisdiction and that of the Local Government Ombudsman and we both undertook an investigation.

37. Working in close collaboration, we found maladministration both by the Council and the Department and concluded that each must carry an equal share of the responsibility for the hardship caused to the complainants. We recommended that each body should pay £100,000 to Mr and Mrs Balchin. The Department for Transport has accepted my recommendation, and the County Council is currently considering its response.

38. However, the relevant legislation requires me and the Local Government Ombudsman to publish separate reports. While both reports can be read separately, it is only when they are read together that the full story can be understood. For this reason each report has the other annexed to it. This experience clearly emphasised the need for reform of the legislation covering aspects of the working arrangements of public sector Ombudsmen. The current restrictions on our ability to work together mean that we cannot provide the sort of joined-up service that we should be able to give all citizens who have complaints which cross more than one Ombudsman jurisdiction.

39. I am therefore pleased to note the publication of a Cabinet Office consultation document in August 2005, on a proposed Regulatory Reform Order, which aims to remove most of the legislative constraints on effective joint working between public sector Ombudsmen in England. The consultation comes to an end on 18 November 2005 and, subject to Parliamentary approval, it is envisaged that the Order will come into force in the spring of 2006. I hope that the proposed Order will attract widespread support and enable us to work even more effectively together in future for the benefit of the customer.

#### OTHER MATTERS

##### *“MP filter”*

40. Following work that the Committee and my Office carried out in the summer of 2004, jointly to survey the opinion of Members of Parliament, a private member’s Bill was introduced that aimed to remove the need for the referral by an MP of any complaint to me as Parliamentary Ombudsman.

41. As the Committee has long recognised, this “MP filter” is one of the barriers to those who seek to use the services of my Office. While I value the relationship my Office has with Parliament and this Committee, I too believe that the time is long overdue to deliver reform and to make access to public sector Ombudsmen consistent, transparent and open. It is therefore disappointing that the Government did not support the Bill and that it has to date not given an indication as to whether it will provide time to effect this much-needed reform.

##### *Occupational pensions*

42. My investigation into the security of final salary occupational pension schemes is now nearing completion. We are in the process of finalising the draft report and will then seek comments on it from the Government and from the representatives of complainants. I hope to publish my report before the end of 2005.

*Equitable Life*

43. My investigators have completed their scrutiny of the considerable amount of evidence covering the regulation of the Society from the early 1980s to December 2001. The investigation team has also met regularly with policyholder action groups and with officials of the bodies under investigation. We are now considering the results of the review of the relevant evidence in order to determine whether that evidence discloses maladministration causing injustice to individuals. To assist me to establish this, we are also taking actuarial and legal advice on the relevant issues.

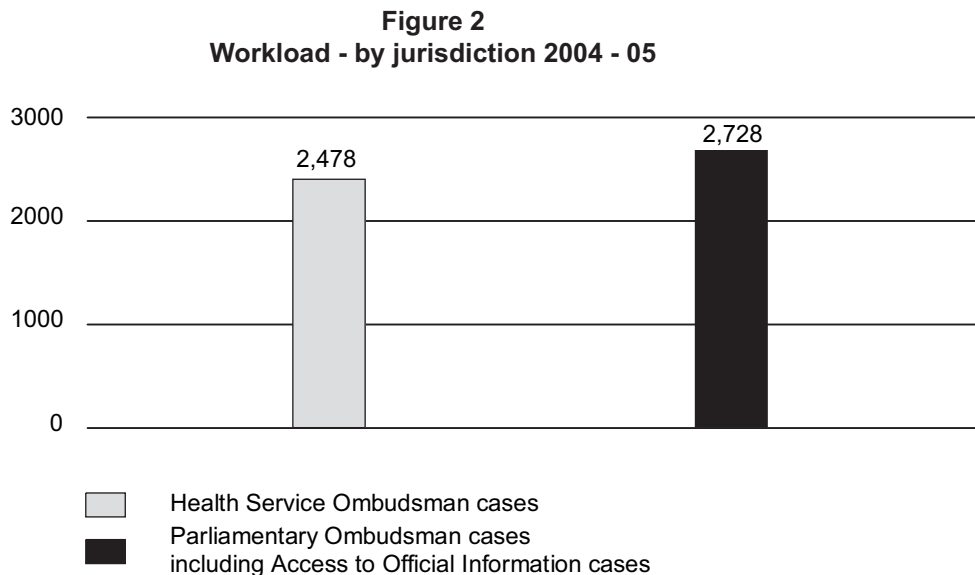
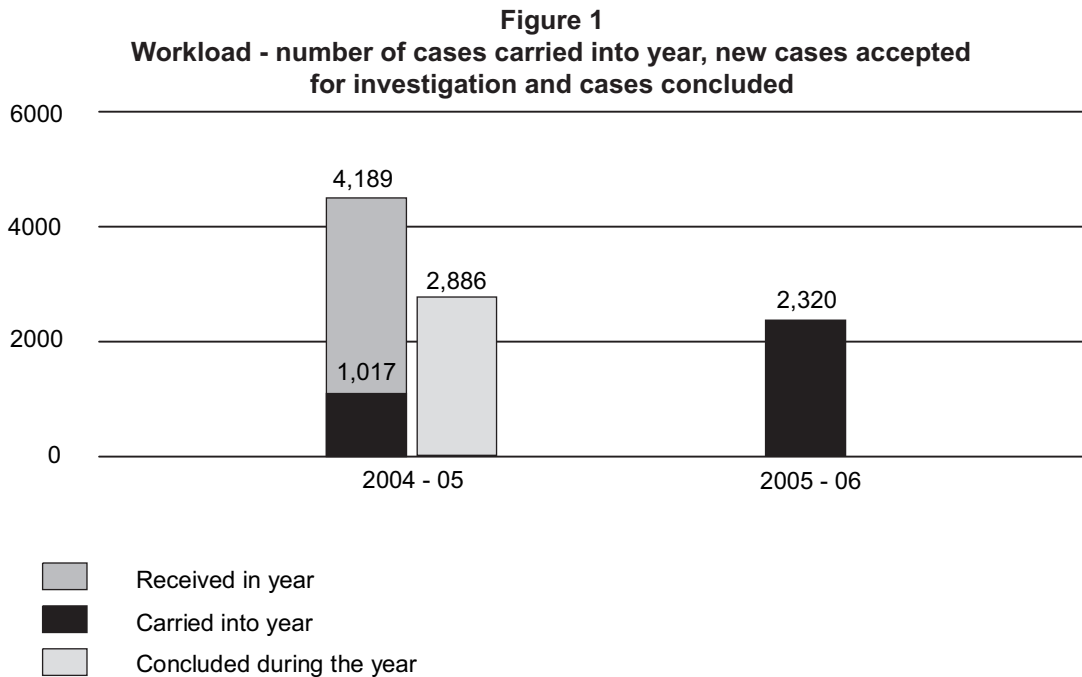
44. I have also set up an academic advisory panel to provide assurance that the judgements that will be made in my report fully accord with the regulatory, policy and industry standards and practices relevant to the period covered by my investigation. I hope to publish my report of the investigation in spring 2006.

*Ann Abraham*

*October 2005*

**Annex**

2004–05 was a challenging year for the Office as we saw a substantial increase in the number of complaints. In the year we accepted 4,189 new cases for investigation, a rise of 988 (30%) on 2003–04. Including the 1,017 cases in progress carried over from last year, our total workload for 2004–05 was 5,206 cases. Figure 1 shows the volume of casework in 2004–05 and work in hand carried over into 2005–06.



Although we concluded 2,886 cases in 2004–05, the rise in the number of new cases accepted for investigation meant that we began 2005–06 with 2,320 cases in hand.

#### SERVICE PERFORMANCE

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>

	<i>Target</i>	<i>Result</i>
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

During 2004–05 we met our target of reaching a decision on 95% of Parliamentary cases within 12 months and exceeded our target for Health Service complaints—reaching a decision for 87% of cases within 12 months (target 80%). We met all our service standards with the exception of our aim of completing 80% of Parliamentary complaints within three months.

**Figure 4**

#### SERVICE PERFORMANCE—TIME TO DECISION<sup>a</sup>

	<i>Target</i>	<i>Result</i>
Complaints to the Parliamentary Ombudsman	0–3 months 80%	62%
	0–6 months 85%	86%
	0–12 months 95%	95%
Complaints to the Health Service Ombudsman	0–3 months 30%	30%
	0–6 months 60%	62%
	0–12 months 80%	87%

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

#### INVESTIGABLE COMPLAINTS, LISTED BY DEPARTMENT OR PUBLIC BODY

The top 25% of departments or bodies in terms of complaints received are listed below. This table is an extract from the full table in our Annual Report. The figure for the Department for Work and Pensions has been broken down into the figures for its main agencies.

<i>Body</i>	<i>carried into year</i>	<i>received in year</i>	<i>concluded in year</i>
Department for Work and Pensions	220	860	715
Child Support Agency	85	304	228
Jobcentre Plus	80	279	248
Pension Service	38	156	145
Others	17	121	94
Inland Revenue <sup>a</sup>	44	348	122
Home Office	22	166	124
Department for Constitutional Affairs	19	98	69
Department of Trade and Industry	8	64	48
Department for Transport	9	55	44
Legal Services Commission	14	53	35
HM Treasury	2	46	43
Children and Family Court Advisory and Sup Service	3	38	27
Office of the Deputy Prime Minister	12	35	41
Department for Environment, Food and Rural Affairs	22	31	26
HM Customs and Excise <sup>a</sup>	5	30	18
Commission for Social Care Inspection	6	28	17
Foreign and Commonwealth Office	6	19	21

<i>Body</i>	<i>carried into year</i>	<i>received in year</i>	<i>concluded in year</i>
Department of Health	3	18	13
Information Commissioner's Office	6	18	17
Ministry of Defence	9	17	17
HM Land Registry	0	15	10
Department for Education and Skills	1	14	15
Criminal Injuries Compensation Authority	4	13	12
Pensions Ombudsman	0	13	7
Health & Safety Executive	5	11	13
Environment Agency	5	10	7

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

Further detail is available on pages 10 and 11 of our Annual Report (HC348).

### Examination of Witnesses

*Witnesses:* **Ms Ann Abraham**, the Parliamentary and Health Service Ombudsman, **Ms Trish Longdon**, Deputy Ombudsman, and **Mr Bill Richardson**, Deputy Chief Executive, Parliamentary and Health Service Ombudsman, examined.

**Q1 Chairman:** Could I call the Committee to order and welcome our witness this morning, Ann Abraham, the Parliamentary and Health Service Ombudsman. She is accompanied by her colleagues, Bill Richardson and Trish Longdon. We are very happy to have you along to the Committee to talk about your Annual Report and matters associated with it. You have given us a very helpful memorandum. Do you want to say something briefly to get us going?

**Ms Abraham:** Yes indeed. I would like to make a few opening remarks. I have said in my memorandum that I and my colleagues, Trish Longdon, my Deputy Ombudsman, and Bill Richardson, my Deputy Chief Executive, very much welcome the opportunity to give evidence to the Committee this morning. It is particularly valuable to bring both "old"—if I may call members of the Committee old—and new members of the Committee up-to-date with our work. We look forward to continuing the productive relationship that we have always had with the Committee. My memorandum tries and, I hope, succeeds in giving the Committee a concise but comprehensive overview of our work over the past year and also to try and update you on some of the work in hand and the issues that we think will be of interest to you. You also have an Annual Report and Accounts for 2004–05. I am particularly pleased that we were able to lay both the Annual Report and the Accounts before Parliament before the July recess for the first time. We have also produced a thin volume, which is our three-year strategic plan, which we are very pleased with as well, particularly as it has enabled us to obtain for the first time—and obviously this is subject to parliamentary approval—Treasury sanction for a three-year settlement of our funding and that is very important to us in terms of forward planning. What I did want to do was just spend a couple of minutes giving the Committee some further information about our workload. Recently one or two MPs have raised concerns with me and, I think, with you, Chairman, about delays in allocating cases for investigation in

my office and I just wanted to explain why that is and also tell you what we are doing about it to put things right. I wanted to start by reminding you of our performance in the year that we did report on Parliament in July, the 2004/05 financial year. We did meet all of our targets and service standards with one exception for that year and they were the targets which the Committee will have seen last year in the business plan. So we dealt with 85% of parliamentary cases within six months and 95% within 12 months. With the health cases, which by their nature tend to take a bit longer, we dealt with 62% within six months and 87% within 12 months. We met those targets. At the same time as dealing with the casework we undertook a very substantial programme of change to provide the basis for longer-term improvement. We introduced a new business approach for handling complaints and we successfully put in place a new computer system to help us manage our day's work and we did that on time, within budget and it works. With all that going on we still managed to complete 2,886 investigations and that is just nine fewer than the 2,895 we completed in the previous year. What made the difference was that during that year we also had a very large increase in our incoming caseload. We took on a total of 4,189 new cases, an increase of 30% on the previous year and that meant we carried forward a substantial caseload into 2005/06. Whereas we started the 2004–05 financial year with just over 1,000 cases in hand, we started this financial year with over 2,000. So that is why we have had some delays in allocating cases for investigation. What are we doing about it? We know that the Ombudsman's office is the last resort for many complainants and we cannot compromise the quality of our decisions, so we have had to gear up to deal with the increase and some of that is about more resources but some of it is about working differently and working better. As I have mentioned, we have completely overhauled our approach to complaints, we have raised the skill levels of staff, we have recruited and inducted new investigators, we

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have also recruited and trained a body of part-time associate investigators to help us handle the current backlog and to give us the flexibility to respond quickly to any unexpected peaks in our future workload to avoid a similar backlog building up again. We actively manage the queue. We do what we call triage: we identify urgent complaints that we need to give priority to and we make active enquiries on others while they are queuing so that the complaint is ready for analysis when it is allocated to an investigator. We had to make sure we had the resources we needed and our discussions with the Treasury have been constructive and productive and we now have, as I have said, a three-year settlement which allows us to plan not just for this year but the following two years as well. So we have no complaints about resources. We are doing everything we can to eliminate the backlog and I intend that it will be very substantially reduced by the end of the financial year. Our service standards mean that we should operate with a work-in-hand figure of around 1,200 cases at any given time and we intend to be close to that figure by the end of March 2006. Of course, this is a demand-led business that we are in and it all depends on whether we have got our assumptions right about the incoming workload for the rest of the year. As you would expect, we monitor our performance regularly as we go through the year and we will report to you and Parliament on our overall performance for 2005–06 when I lay my Annual Report next year. So, in summary, what I wanted to say to the Committee is that I and all of my staff have been as concerned about the delays in allocation as you and other Members have been. We are taking action to remedy that situation and we have the resources that we need to do that. I hope that is helpful, Chairman. I and my team would be happy to answer any questions on any aspect of our work.

**Q2 Chairman:** Thank you for that. That really is helpful. Could I congratulate you on the report, too, because I think it is helpful having the Parliamentary and Health Service work brought together in one volume that is wonderfully presented, nice to read and makes sense. You tell us that because of the way that you are doing it now we cannot compare what is happening now with what has happened previously because you have re-engineered the whole complaints system. Could you say something about how you are counting complaints now, how you are dealing with them and, therefore, why it is not possible to compare but why it will be a better system in the future?

**Ms Abraham:** Indeed. I think the reason why it will be a better system in future is that we will actually be reporting on all of our work in a way that I hope will be simpler and clearer. We are following an approach that certainly the Local Government Ombudsman took some years ago and one that I have been used to in another context, which is that when we look at a case, decide it is in jurisdiction and make enquiries we call it an investigation. Under the previous system of classification we drew a distinction between cases that we looked at

informally and ones that we called statutory investigations where we produced statutory reports and there were very, very small numbers of those because we only went into that statutory investigation mode if our enquiries were not being productive. Very often, particularly on health cases, we would do a huge amount of work and make enquiries to discover that we felt that there was not any substance of complaint in terms of what we could uphold and we would take sometimes weeks and months to do that. Then we would write to the complainant and say, “We’re not going to investigate your complaint”. That caused a great deal of distress because people would say “Why isn’t my case worth investigating? What have you been doing all this time?” when, in fact, we had been making lots of enquiries and I think in any kind of common sense, plain English understanding we had been investigating. Every time we now accept a case and do some work on it we call it an investigation. We are looking at the work in the round. We are, hopefully, making it simpler to understand for complainants and the parties but also for the wider audience and yourselves.

**Q3 Chairman:** When we write to you now about a case, the first thing we always want to know is whether you are going to accept it for investigation. Are you saying now that in fact you are going to accept far more things for investigation because you are not making that formal rule about what an investigation is and that you will take anything that is within jurisdiction, is that right?

**Ms Abraham:** If it is within jurisdiction and it is not premature. What is interesting for us is that if the Regulatory Reform Order goes through and gives us explicit powers around the whole early resolution area we may find that there emerges from that a rather different category of what I call—and we will have to find another term for this because it is too long—“intervention short of an investigation”. If something is within jurisdiction and it is not premature in the sense that it has not been to the Health Care Commission or the Department has not had a chance to look at it, then once we have made those preliminary checks, and they are considerable checks sometimes, we will call that a case that is accepted for investigation. Some of them will not take very long to investigate, but we will then be in investigation mode and we will have all our powers available to us once we have accepted something for investigation.

**Q4 Chairman:** When we used to have these conversations we always used to end up talking about a “Rolls Royce” system that the Ombudsman offered because she would do these very long and detailed investigations once you took a case on. As I understand it you are still going to have some Rolls Royce investigations but you are going to have a lot of Ford Fiesta ones as well, are you not?

**Ms Abraham:** I am a Volkswagen person as you know.



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**Q5 Chairman:** The people's car! How are we going to decide who gets the Rolls Royce treatment?

**Ms Abraham:** I am always worried about this Rolls Royce analogy because there are so few of them around and so few of us can afford them. The quality of our investigations, which is why I make the analogy that I do, is something that we cannot compromise on. Sometimes historically we have perhaps not drawn the line at the point when actually taking the investigation further does not add very much. The tension that every Ombudsman has to address—and Trish and I have had lengthy conversations about this—is the quality-quantity conundrum; there is a tension there. Quality obviously is important. It is particularly important when you are at the end of the line for many, many complainants, but there are times when you can make an intervention which is quicker and more effective without necessarily going into the whole formal reporting type of mechanism. We are seeing a number of themed investigations and I have reported a bit upon that in my memorandum and there are certain investigations where, given the nature of what we are looking at and the implications of our findings well beyond the individual case, I think those sorts of investigations will get the Rolls Royce treatment. I think there is a very high standard of investigation that we can do for a lot more cases. It is quite interesting to see how this is playing through now in the way our work comes through the office. For example, in our new approach we have put huge emphasis on talking to the complainant very early in the investigation to understand precisely what it is that is concerning them and to make sure that we have got that understanding correct and that we do continue to keep complainants and obviously Members informed in the course of an investigation, but that we do not find ourselves investigating a whole raft of things that are not the main beef for the complainant, something else is. Interestingly, we are already seeing quite a dramatic drop in what we call “post decision correspondence” because we have thrashed out early on what the issues are and therefore we are not getting letters after we have issued a decision saying, “But I didn't really want you to look at that”.

**Q6 David Heyes:** You have said that you have got a robust, adequately funded three-year plan in place and you made the comment that it is demand led and therefore there are some uncertainties about it. I want to ask you about the assumptions you might have made about the removal of the MP filter in relation to that because intuitively you expect that if that happens there is going to be a huge increase in demand. What are the consequences of that for your robust plan?

**Ms Abraham:** I think our growth assumption in caseload going forward is 12% a year. We have made no assumptions about the removal of the MP filter. Certainly where we are at the moment, I do not detect any sign of change on that front in the immediate or indeed perhaps foreseeable future. You will be aware that we have made changes in the

way we communicate with complainants and we communicate with complainants and MPs at the same time now. In terms of referrals, I think it is interesting, there does seem to be a concern that suddenly if the filter were to be removed we would be inundated. I do not believe that would be so. It did not happen when the councillor filter was removed for the Local Government Ombudsman, and Trish in fact has worked for the Local Government Ombudsman so she can talk directly about that. It would be something we would need to absorb. I really do not believe, and never have done, that my office should be in the volume complaints handling business. We are the end of the line. We are hugely interested in ensuring that the NHS and departments and agencies provide excellent complaint handling but, more importantly, provide an excellent front-line service. Therefore, with all of our work and our projections forward we have said 12% over the next three years because we do not think that the corner will be turned. If the work we are seeking to do to see improvements in public service delivery, and complaint handling as a part of that, is effective then we would expect to see a downturn in complaints over time.

**Q7 Chairman:** The work that you are doing is expanding. The number of cases taken on has increased substantially.

**Ms Abraham:** It did last year, but there has been nothing like the same increase in the first six months of this year.

**Q8 Chairman:** You are carrying this very substantial backlog of cases which you were talking about earlier on. Just in a nutshell, when are you going to get rid of it?

**Ms Abraham:** I think the figure I said was anything over 1,200 cases we would see as a backlog. We hope to be within spitting distance of the 1,200 by the end of March and certainly in the course of next year.

**Q9 Chairman:** You have talked just now about the MP filter. The Government is now proposing there should be a Regulatory Reform Order which would do the thing which you have argued for and others have argued for over time, which is to enable the different Ombudsmen to work together more closely in removing some of the legislative barriers to doing that. Does the Regulatory Reform Order give you everything you want apart from direct citizen access?

**Ms Abraham:** I suppose in a nutshell I think I would say yes, for now. I am very much aware that the public sector Ombudsman arrangements—and I go beyond my office when I say that—will be 40 years old in 2007. The Regulatory Reform Order is helpful, it goes a long way, it does some very valuable things, but it does seem to me that 40 years on from the establishment of the Parliamentary Ombudsman might be the time to have a rather more comprehensive look across the piece at what an Ombudsman fit for the 21st Century would look like. I would say that post civil justice reform, post human rights and post freedom of information,

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actually maybe we ought to be starting that wider debate and thinking about where that might take us for 2007 with perhaps a blueprint for the future.

**Chairman:** I think you are inviting us to do some work on that.

**Q10 Mr Burrowes:** In the context of many of your recommendations not being fully accepted, particularly the Debt of Honour report and Tax Credits, and wanting to look and change and become more efficient, where would you see the problem? Is the problem the growing resistance from the Government in terms of accepting these recommendations?

**Ms Abraham:** First of all, can I say that I do not think that the Government has not accepted many of my recommendations. I think the Debt of Honour report is highly exceptional. That is one of the reasons I laid it before Parliament. In my memorandum I have invited the Committee to reflect on the Government's response because I think constitutionally it is significant and it is highly exceptional. With Tax Credits, I have read Mr Varney's evidence to the Treasury Sub-Committee last week and I am still unclear about the Revenue's position in terms of my findings in that report and we are in discussions. There are some very clear and direct statements made, but, in dialogue with the Revenue, I am not sure that the situation is entirely clear. What I would say is that it is of huge concern to me to see indications that the Government may be picking and choosing which of the Parliamentary Ombudsman's recommendations it wants to accept. That is a matter for this Committee and obviously I look for and need the support of this Committee in that respect. I will have been in post for three years next month. It is only in very recent months that I have seen any indication of the Government's reluctance to accept my recommendations. I have put the access to official information cases to one side as being a particular category, but these cases are significant and, I have to say, it is not a habit I would like to see the Government getting into and I am sure the Committee would not either.

**Q11 Mr Burrowes:** Would you say you lack teeth as the Ombudsman? Would you give us your views on whether there should be an additional power to enforce those recommendations?

**Ms Abraham:** I think you raise a very important and very timely question. I have been asked by this Committee before whether I felt that I needed something more than a power to recommend. In response to that in the past I have said that given the acceptance rate for recommendations is as high as it is, 99.99%, then I do not see the need for that. If that were different and started to change then I would take a different view.

**Q12 Mr Burrowes:** This power does not always have to be used.

**Ms Abraham:** Absolutely. In my previous role as Legal Services Ombudsman I did have powers to make recommendations and to make what were described in that context as binding orders. I used the latter very infrequently, but I did use it.

**Q13 Julia Goldsworthy:** I want to ask you about tax credits and the discrepancies that there are between the Ombudsman and the Inland Revenue in terms of what counts as maladministration and what does not. I just wondered if you had anything else to add on two specific cases. You said that there was maladministration in the automatic recovery of over-payments which is basically a bit like *Little Britain* "The computer says no!" and payments stop automatically in-year. Although it does not get the press attention that simple overpayments and writing them off gets, obviously it is crucial to people as they receive them. I just wondered if you had anything to add about you being wrong to say it was maladministration. Secondly, I just wondered if you had a view on the Revenue's justification of automatic recovery. I have got a letter from the Paymaster General to David Laws in June justifying it which says, "In practice HMRC has found that in the vast majority of cases where a claimant disputes, an overpayment recovery is actually the appropriate outcome. In the light of the above, therefore, HMRC's legal advice is that it is rational that it should operate a system that includes a presumption of recovery. The introduction of the rule that each and every case involving an unidentified overpayment should be the subject of a detailed investigation would exacerbate delays in processing claims throughout the system." That is quite contradictory to your recommendation.

**Ms Abraham:** It is. What I would say initially is to draw the distinction between what I think the letter you are quoting is about and my report. There is the possibility of a challenge on the lawfulness of automatic recovery and that obviously is being discussed in another place and I am not party to that, it is nothing to do with me. I think there is a test of lawfulness which will presumably play itself out in another place. The maladministration test is a different test. We had similar discussions in a completely different arena with the MoD in relation to the Debt of Honour report which describes something important which I think we have called "maladministration short of unlawfulness". My view about this is it is perfectly possible for something to be lawful but still maladministration. I think that is the important distinction to draw here first. What my report says is that it is inherently unfair to move from a position where an overpayment has been identified automatically to recover that payment and it is a discretionary decision whether or not to recover. There are issues of hardship to consider. Therefore, to have a system which as soon as the overpayment is identified, recovery is triggered, is unfair and can and does, as we have seen, lead to hardship and injustice. When I have explored this further in discussions with the Revenue I have not said that there should be no automation in the recovery of overpayments. What

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I have said is there needs to be some sort of gap/pause in between the identification of an overpayment and starting to recover it and an opportunity in that gap for the customer to say, "Excuse me, I don't agree". That could be an automated gap if you like. Presumably it is perfectly possible to trigger a letter which says, "We think there is an overpayment. This is why we think so. If we don't hear from you we will automatically trigger recovery in 'x' weeks' time." That seems to me to be a reasonable thing to do and it can be automated. The injustice and hardship here is proven. It is not a question of saying, "Well, actually that's the way the tax system works and it would be terribly difficult to do it another way." There is something about fettering discretion around discretionary decisions and I think there is a serious point. Our cases show the effect on the individuals of hearing that they are going from having a tax credit being paid at this level to immediate recovery with no opportunity to say, "Just a minute. That doesn't make any sense." That is the point I am making.

**Q14 Jenny Willott:** It has often proved very difficult for MPs to get clear answers in response to Parliamentary Questions and so on and to get information particularly about tax credits, things like the estimates for overpayments and the number of excess payments in-year. I was just wondering if you thought this was a systemic problem in that particular area or if you thought that it was wider and what you felt would be able to be done to get the Treasury to be more accountable to Parliament.

**Ms Abraham:** I think I have to be careful here.

**Q15 Chairman:** Don't be!

**Ms Abraham:** I was going to say to be careful not to try and suggest that my office has a more wide-ranging role or a role beyond its remit. Obviously my office has a role in terms of accountability and openness and I think the Ombudsman in the past has been described as helping Parliament to hold the Executive to account. When it comes to the wider issues around levels of overpayment there are other players, not least the National Audit Office, and others committees, not least the Public Accounts Committee, whose role is much more centre stage than mine. We will continue, we have no choice, because we have a substantial caseload of tax credits cases, to work in this area and to work with the Revenue in giving continual feedback on what the cases coming through are telling us and to give them our views on the changes that they are putting in place to address those issues on the administration of tax credits. I think your wider point is a rather more difficult one for me to make any helpful contribution to.

**Q16 Jenny Willott:** In your experience is their reluctance to provide information to MPs in this particular area a blip or have you come across other cases where it is also difficult to get information? There does seem to have been almost a putting up of the barricades to make sure people cannot quite see

what the problems are. I wondered if you had experienced that in other areas as well or if it was quite specific to the Treasury and tax credits.

**Ms Abraham:** I think I would say in all honesty, with one or two notable and probably public exceptions, that Government and the NHS provides my office with the information it needs when it needs it.

**Q17 Mr Liddell-Grainger:** This whole thing is a shambles. We are talking about overpayments of £2.2 billion. We do not know what the underpayments are. The system is not capable of coping with what it was set up to do. Every MP will have cases on their desks at the moment. It is not able to do the job, is it? Be indiscrete here!

**Ms Abraham:** I am never indiscrete. My report tells the story. When I was before the Committee last year we talked then about tax credits and I said that we were in the process of putting together a special report and we took our time to do it because we wanted to ensure that we had covered the ground, that we had got our facts right and that we had done everything we could to tell the story of the hardship, but also to give a comprehensive view of what we thought might be involved in putting this right. I am not going to disagree with anything you say about the description of it. I suppose what I would say is that I do think, given the scale of the problem as described in the report, there are no quick fixes here. I have always felt that this was going to be something that my office would be involved in for some time to come. I would also say in all seriousness that one of the things that concerns me as an Ombudsman is seeing changes, improvements, new systems brought in in impossible timescales in order to fix problems, when actually they need longer than that to fix and that trying to do things in impossible timescales just makes it worse. I think there is something of a long haul here. Certainly the recent discussions that we have been having with the Revenue around this are constructive, they are open and there have been some very frank and helpful exchanges between us. I think we now understand each other better than we did probably before this report came out. My office is in for the duration. I hope that this will not be an area where there is the pressure for quick fixes which we all know will only lead to compounding problems.

**Q18 Mr Liddell-Grainger:** We are MPs and we sit in the House. We have got the chance to say to Government, "Right, what is your timescale? What is the long term? Is it five years or 10 years?". Overpayments will still go up. Underpayments we do not know about. All we know is that the workload is getting bigger. What do you call a timescale?

**Ms Abraham:** I do not know the answer to those questions.

**Q19 Mr Liddell-Grainger:** The problem is we do not either. You are the Ombudsman. What would you suggest? Can I write to you?

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**Ms Abraham:** I hesitate to put myself in your shoes. What I think is this is going to take some time to put right and I think that is years rather than months. What I do think is that it is important that all of us stay on the case. The Committee could be back here in six months saying, "Well, okay, we were being told the corner was going to be turned and there will be improvements. Well, what have we seen in six months? What have we seen in 12 months?" For me one of the interesting areas is the difference in perspective perhaps that we have around what is the major problem. The cases we are dealing with primarily are about official error. When we talk to the Revenue they seem to be talking about customer error. Making that fit together I think is going to be quite interesting. There is almost a sense that if customers can be supported in notifying changes of circumstance and understanding the implications of not doing so that somehow it will come right. I am not so sure about that. I think there is a fundamental cultural shift around seeing this from the point of view of people who need this money. If they did not need the money there would not be a problem.

**Q20 Mr Liddell-Grainger:** In the letters I have seen from people who have got the problem the Revenue is presuming them guilty regardless. The overpayment is not a question, it is a request. You pointed out there should be a cooling off period, but that is not happening in reality, is it?

**Ms Abraham:** No. The computer system is not designed to do that, it is designed to do the opposite.

**Q21 Mr Liddell-Grainger:** I come back to where I started, the system is not working.

**Ms Abraham:** The system is certainly causing hardship for substantial numbers of people, yes.

**Q22 Kelvin Hopkins:** I have written down the words "teething troubles" about tax credits. You are now talking about the long haul. Your criticisms are fairly strong and clearly the workload is increasing enormously. Is there a hint that perhaps the whole system is inherently flawed?

**Ms Abraham:** Let me just deal with the teething troubles point because I think the words "teething troubles" appear in my report in the context of in the first year we were being told by the Revenue that these were teething troubles and, therefore, we did not publish a report after the first year, but we waited and clearly the teething troubles carried on and were more than teething troubles. I have forgotten what your question was.

**Q23 Kelvin Hopkins:** Is there something inherently wrong about the system? It is a political question really and I am tempting you to step over that line which you so carefully avoid for obvious reasons.

**Ms Abraham:** Thank you for explaining that to me!

**Q24 Kelvin Hopkins:** Given that the Revenue deals on an annual basis with collecting taxes from people who have got jobs and are quite comfortably off, people like Members of Parliament who can afford to pay their taxes—

**Ms Abraham:** Absolutely.

**Q25 Kelvin Hopkins:**—and benefits are about poor people who live week to week, trying to put food on the table for their children, is there something wrong about the system which tries to marry together benefits payments to poor people with collecting revenue from rich people?

**Ms Abraham:** I think you identify a key question really for the Revenue and for the Treasury because I think I understand entirely the thinking behind making that part of the tax system rather than the benefits system and the positive reason for doing that. I think the difference for me, and this is really, it seems to me, at the heart of it, these are new and different customers and these are not people for whom sorting it all out at the end of the year will do. I could give you a quote from one of my staff I was talking to yesterday, that if they did not need the money, it would not matter, and I think that is what this is all about. Unless the Revenue really grasps this and puts itself in the position of the people on the receiving end of their award notices and their automatic recovery, then actually I think there are fundamental problems, so that is the challenge for the Revenue, to see this from the other side.

**Q26 Kelvin Hopkins:** But have you encountered people who say that the Government has made a mistake in going down this route and they should have actually maintained a separation between providing benefits on a short-term basis rather than trying to marry it to the tax system? Have you encountered people who say that?

**Ms Abraham:** I have encountered people who say that.

**Kelvin Hopkins:** Oh good! I will finish with a short story. Some single parents in my constituency who have to work, and the Government wants them to work, have been receiving credits. Several of them have now been told that they have got to pay back substantial sums of money. They are probably going to give up their jobs, take their children out of nursery, so they will not work and a nursery may close. These are the kind of knock-on effects of the system and I hope that perhaps if I could write to you, we can build some even stronger criticisms for a future report.

**Q27 Grant Shapps:** On this point, one-third of households overpaid to a total of £1.9 billion in 2003/04. Everything points towards it being worse now, certainly according to the workload that is coming to us and on to you, yet in your report, which was not published that long ago, you said that the system is still not in disarray. What would constitute disarray, in your view?

**Ms Abraham:** Well, I suppose if all the customers in receipt of tax credits were experiencing the problems that the customers that we are seeing and you are seeing are. If you think of the huge numbers of people in receipt of tax credits, this is about people on low incomes, usually with children for whom

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these payments matter in terms of their weekly budget. Now, I think the number of people in receipt of tax credits does not come into that description.

**Q28 Grant Shapps:** So one-third of the system is not in “disarray” and all of it would be “disarray”, whereas two-thirds would not. I realise this is semantics in a sense, but I am curious as to how your report here actually describes it as not being in disarray by any measure. I would have thought that £1.9 billion and a third of all households surely has to be worthy of the description “disarray”.

**Ms Abraham:** Well, you will know that I choose my words carefully and I try very hard to be fair.

**Q29 Grant Shapps:** I suppose in a sense it is because you choose your words so carefully and I know, therefore, that it is a deliberate description that I am so curious about the choice of word. It just seems not to be, I suppose, in proportion to the size of the problem to say “not in disarray”.

**Ms Abraham:** Well, I would still say that the entire system of tax credits is not in disarray. There is a substantial part of the system that has serious problems.

**Q30 Grant Shapps:** Do you think the system has got better or worse since that 2003–04 period that created the £1.9 billion in one-third of homes that you were describing as not being in disarray?

**Ms Abraham:** Well, I can only talk from my perspective really and if you look at the number of cases coming to us, they have increased and they are continuing to be at a substantial level. I do not think that any corners have been turned yet. I suppose what I would say is that I think there is now more recognition, more understanding in our discussions with the Revenue of the scale and seriousness of the problem.

**Q31 Grant Shapps:** I guess since the corner has not yet been turned, and I think we all recognise that, there may well be more than a third now of households overpaid, maybe a half or whatever, and we will leave aside whether that is yet sufficient to be in disarray, but I wonder whether I can draw you at all to speculate on whether the system will ever really work. It seems to all of us, I think, although perhaps I should not speak for anybody else, that the system tries to track changes in people’s personal income too tightly, that it is an IT disaster, and we understand that over the summer there was a lot of work done to try and improve the computer system in order to keep up to speed, but that in fact that work is probably largely too late because it came many months after a pledge was made that money would not be taken away if it had been overpaid, or, as has been discussed, there is just the wrong sort of client base for this sort of tax-driven approach. They are not used to dealing with these things, as you said yourself, cannot wait until the end of the year and find the forms immensely complex. I have piles of them in my casework and they are almost impossible to fathom out and it does not actually, as perhaps the Inland Revenue thinks, make it any easier just

because you have received 100 of them. Actually their response so often, which is why so many cases come to you, is simply to resend the same information again and it is no plainer the second time, in my view, so it is a baffling system. I wonder whether it is the tracking of the changes too tightly, the IT problems or the wrong client base, if you like, for the system which in your view is most at fault and whether, therefore, it can ever be resolved.

**Ms Abraham:** I think all the questions you pose are entirely appropriate and entirely relevant given where we are. I think, if I may say so, my report poses most of those questions. I take as a given that this is the system that Parliament has decided, that the Government has put in place and, therefore, I will look at the administration of that system, but it goes to the heart of what I said in response to Mr Hopkins’ question. If I can read your recommendation 12 of my report which is all about a whole-case approach, it says, “The Revenue should consider the way it organises delivery of tax credits in order to deliver a better, more complete service to the customers it now serves. A different model is needed in complex cases and where something has gone wrong. More sustained and informed communication with customers about their cases is essential, as is a ‘whole case’ approach to investigation to ensure a tax credits award is correct”. It is this shift, I think, towards a full understanding of the customer base and just what it means to be in receipt of one of those notifications in relation to recovery of overpayments, what it means in terms of what you are going to put on the table for tea tomorrow.

**Q32 Grant Shapps:** So taking all of that into account, it sounds to me like this current system may never really ever work properly.

**Ms Abraham:** I reserve judgment on that and I do not say that flippantly. I think what this report does is raise questions. The Revenue are responding, as I understand it, with some very substantial changes and improvements to the administration of the system which they clearly believe will make it work better. I will wait and see.

**Q33 Grant Shapps:** So it is not in disarray yet, in your view, although we think it might be getting worse, and I will be interested to read your report next year, and the Revenue or ministers, rather, have actually said that it will take two or three cycles possibly to settle down, but what is your understanding of the timescale involved in two or three cycles? Are they talking about cycles of the moon or when can we expect this?

**Ms Abraham:** Well, you must ask them that question, but I suspect they mean two or three years.

**Q34 Grant Shapps:** That is your understanding, two or three years?

**Ms Abraham:** Yes.

**Q35 Chairman:** If we are going to talk about disarray, just so that we are clear, we are talking, are we not, about systemic maladministration?

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*Ms Abraham:* Yes.

**Q36 Julie Morgan:** Evidence from my constituency office is that things are actually getting worse. There has been an increase in complaints recently all linked to the inability to log the change of circumstances that have been reported by the constituent and the situation does seem to be deteriorating. At what stage do you think a system like this can be allowed to deteriorate? At what stage do you think you would have to say, "The system is not working"?

*Ms Abraham:* I am trying not to respond unhelpfully by saying when I see that it is not working.

**Q37 Julie Morgan:** What would you need to see in order to say that it is not working?

*Ms Abraham:* Well, I would need to see no reduction in the number of cases coming to me and to the adjudicator and the problems that have been identified in this report continuing and getting worse. Those are the things that I suppose would be my benchmarks as to whether the thing can ever work. What we all need to understand from the Revenue and from the Government, and I come back to my impossible timescales point, is that there is no point saying to the Revenue, I believe, "Sort all this out in six months". It cannot be sorted out in six months, so there is something about a realistic plan to put things right with a realistic timescale and delivering against that, and I guess that is what I would be looking for, if I were sitting on your side of the table or if I was the Chairman of the Revenue, to put this right. I could be confident then that actually there was a plan in place to do this in a realistic timescale and it was delivering the goods, and that is why I say wait and see, certainly for me. This report came out in June and we are only in October, so this is no point for me to be saying, "Oh well, that's it. It will never be sorted". I do not know.

**Q38 Julie Morgan:** But what if the cases actually continue to go up?

*Ms Abraham:* Yes, that would be a real alarm bell, a warning signal for me.

**Julie Morgan:** Because that does seem to be the evidence at the moment.

**Q39 Julia Goldsworthy:** This policy, because it is so complicated and because it is so big, and maybe because it is so centralised and because of the IT system, do you think that as a government policy it could have resulted in anything but maladministration and creeping costs?

*Ms Abraham:* It is a very interesting question. I am a huge optimist. I always think things can be done well and done properly, otherwise I would not do this job, so no, I suppose I do not think that. There are always concerns about complex systems and if we had another hour, I could do my soapbox bit about the complexity of the benefits system and the dangers inherent then in complex systems with lots of computerisation and the difficulties that that creates for all of us, but I think the thing for me about the Revenue is that this seems to be about the customer base as much as it is about the IT.

**Q40 Julia Goldsworthy:** But the central presumption in the legislation was that it is centred around overpayments and this is exactly what is causing the problem, so should this not have been seen coming a long way off?

*Ms Abraham:* Possibly so, but we are where we are. It seems to me that if the nature of the customer base means that you cannot sort all this out at the year end, then you have to get it right in year.

**Jenny Willott:** I was going to ask about the CSA, but I will save it for another time.

**Chairman:** Yes, I think we will save the CSA for another time. We have resolved, I think, to have you back shortly so that we can do more justice to many of the things that you are talking about. This is a quick scamper around the field.

**Q41 David Heyes:** The discussions that you are involved in with the Revenue, I really would agree with and support the line that you are taking in trying to get them to introduce some humanity and sensitivity into this, or at least that is how I have taken the meaning of what you are saying, and I commend that, but is there not a risk in this for you that what you are actually doing is negotiating with them rather than just having discussions with them and is that an appropriate role for the Ombudsman? You have come with a very clear set of recommendations based on an objective investigation, but negotiation involves compromise, so are you not going to water down your recommendations? You must have thought of this.

*Ms Abraham:* No, I am not going to water down the recommendations. I think it is an important point that you raise and I know that there is a school of thought which says that ombudsmen deliver their pronouncements and then they will not discuss them, but I just do not think that is real. If I make a recommendation in a report, whether it is a special report or a report on an individual case, I have got there through a process of analysis and judgment which means that it is a serious recommendation. I had a lot of debate with the Revenue about the question of automated recovery. Now, we may discuss actually what the words on the page mean and I think when they first saw the words on the page, they thought I was saying, "No automation anywhere", but I do not think I am saying that. I am saying that there needs to be a pause. It could be an automated pause, but there needs to be a pause and it is inherently unfair not to have one. I stick to my guns about that and we have talked about it a great deal, so you will have to judge me on my performance as well, but I certainly have no intention of compromising my recommendations.

**Q42 Chairman:** It is possible, is it not, that an ombudsman could make a recommendation that was ill-conceived or a judgment that was wrong?

*Ms Abraham:* Yes.

**Q43 Chairman:** In which case, one would be perfectly entitled to challenge it.

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**Ms Abraham:** Well, who is “one” in that case? I think there is an important constitutional point here. I think it is my job to determine maladministration. If I make a finding which is wholly unreasonable that no reasonable ombudsman can make, and people have, complainants have challenged that in the High Court. Now, I am not suggesting for a moment that we should all toddle off to the High Court on these issues, but it seems to me that there is a starting presumption that the ombudsman knows her job and if I say that there is maladministration, I have not reached that view lightly and I do not expect the Government or permanent secretaries to say, “We don’t agree” and walk away. They can argue with me, of course they can, and I may not be right and this Committee may take the view that I have done something completely off the wall. Well, fine, let’s talk about it, but I think the place for those discussions is not in the Government or in the NHS where the Government somehow decides to pick and choose which of my findings it likes. There is an important constitutional principle here, it seems to me. This is Parliament’s Ombudsman and I am here for a purpose.

**Q44 Mr Prentice:** On this issue of NHS complaints I read your paper *Making Things Better* and the Department of Health is a suitable case for treatment, is it not? It is a complete basket case in the way it has organised and reorganised the complaints system. That is what you are saying in the report.

**Ms Abraham:** Because I choose my words carefully, “basket case” does not feature often, but the report is a very serious attempt to describe the history of NHS complaints procedures and the problems that there have been. What I really feel now is that, particularly post-Shipman, there is a real opportunity to get this right once and for all. If this is not the time, I do not know when is.

**Q45 Mr Prentice:** We have a whole number of NHS organisations that are constantly morphing and changing into new organisations. It is all documented in your report. Some NHS bodies are set up one year and they are dismantled the following year. You talked about tax credits and the impossible timescales. You talk about periods when the Department of Health are thinking up these new complaints systems and patterns of long periods of comparative inactivity, interspersed with much shorter periods of frantic activity to unrealistic deadlines. Then you go on to say that it is not conducive to well planned, thought through change. That is why I said it is a basket case.

**Ms Abraham:** We describe it in different ways but I think we are describing the same thing.

**Q46 Mr Prentice:** You are very worried about the fragmentation of the NHS. What the government is now embarked on, which is to bring in the private sector, not for profit voluntary sector, in a big way so that in a year’s time we are not going to have practice nurses, physiotherapists, health visitors and midwives, that whole constellation of people who are currently employed by the NHS. They are going

to be employed by the private sector and other organisations. How is the complaints system going to work in this new landscape, where the government is massively extending the private sector’s role in the NHS?

**Ms Abraham:** Trish and I are smiling at each other because the theme of the last week seems to have been the whole question of private health care and complaints systems. We were talking to the General Dental Council earlier this week about the systems that they are putting in place. I will not go into dentists because we could talk about that at great length, I am sure, but I think the fundamental point is absolutely right. I suppose I come back in a way to my 40 years on. When these Ombudsman systems and complaint handling arrangements were put in place, the world was a lot less complex than it is now. The delivery of public services was a lot less fragmented. The mixed economy was not there. In terms of both regulation and Ombudsman systems, we need coherent, comprehensive complaint handling which takes on board the public/private, the foundation/non-foundation, the health and social care—you name it—because for the individual it is one episode of care or treatment coming from a whole raft of different places.

**Q47 Mr Prentice:** It is a complete dog’s breakfast, is it not?

**Ms Abraham:** It is a complete dog’s breakfast.

**Q48 Mr Prentice:** I read in your report that foundation trusts that were supposed to be the way forward do not even have local complaints handling procedures. There is no compunction.

**Ms Abraham:** They come under a different system of regulation.

**Q49 Chairman:** We shall come back to this in detail with you. We will want to perhaps have a separate session, talking about some of these issues. Finally, the government in the last two or three weeks has announced that it is going to make what it calls an apology payment on the Japanese prisoner of war issue. Just for the record, I take it that that apology payment is not regarded by you as an adequate response to what you recommended?

**Ms Abraham:** I made four recommendations in that report and two of them were not accepted by the government. The government’s response in its totality does not meet all of my recommendations and does not address all of the points that I made. The apology payment and the level of it is a decision that government has made. It is not one that they agreed with me.

**Q50 Chairman:** As you know, we are going to have a session on this with the Minister from the MoD before long and we shall want to talk to you again in that context too because we do take a very serious view of those occasions when what you recommend is not accepted. It has always been the convention of your office that there was no need to have enforcement powers because your recommendations carried such authority that they

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would never not be accepted. If we do find that on a number of fronts this is not happening—we have talked about some of the instances today—you are right to expect this Committee to take a very serious view of it and we shall do.

*Ms Abraham:* Thank you.

**Chairman:** We are grateful for this morning. We are going now to use your report on tax credits to take it further by talking to the people from the Revenue. Thank you very much.

### Examination of Witnesses

*Witnesses:* **Mr David Varney**, Executive Chairman, **Mr Paul Gray, CB**, Deputy Chairman, and **Ms Sarah Walker**, Director of Benefits and Credits, HM Revenue and Customs, examined.

**Ms Ann Abraham**, the Parliamentary and Health Service Ombudsman, further examined.

**Q51 Chairman:** Welcome to our witnesses, Mr David Varney, who is the executive chairman of Her Majesty's Revenue and Customs, accompanied by Paul Gray, who is the deputy chairman and Sarah Walker, who is the director of benefits and credits. We are very pleased to have you along. I understand you ran the gauntlet of the treasury select committee last week and you get us this week. I hope you have a better week next week. Thank you for coming along. You will know why we have asked you to come along, which is because we are, as it were, the custodians of the reports from the Ombudsman. In reading Ombudsman reports over the years, they only make special reports when there is an issue of wide concern, but I do not think I have read a more devastating report from an Ombudsman in recent times than the one on the tax credit system. This was confirmed just now in evidence from the Ombudsman. This is a system that is characterised by what she agreed was systemic maladministration. First of all, would you agree with that it is characterised by systemic maladministration?

**Mr Varney:** No. I agree with what the Ombudsman says in the first part of her report on page three. This report does not suggest the new tax credit system is in general disarray. On the contrary, it recognises that given the scale of it, its introduction has been broadly successful. Then it identifies a series of problems and issues which we ourselves are working to improve. We are working with the Ombudsman on particular cases that were identified and generic lessons to learn, making the system work more effectively and efficiently. What happened with the introduction of the new system was, sadly, the computer system did not work and we were also introducing a change from a benefit system to a system which reflects more accurately changes in circumstance. That gives rise to two things. One is an in year adjustment so that when people report change of circumstance, the benefit is adjusted to minimise the amount of overpayments. It does give rise, if we do not know what those changes in circumstances are, to overpayments at the end of the year. Overpayments are an intrinsic part of the system that Parliament approved with the budgetary papers when the scheme was described. The expectation was that there would be a million overpayments in the first year of running new tax credits and that would go down to 750,000. The

computer problems which have dogged us exacerbated that number. I think there is an issue that the system works well and has a lot of achievements which can be put on the positive side but there are undoubtedly some groups of customers who have been let down badly by the Revenue and Customs, and we are determined to improve our performance.

**Q52 Chairman:** I am staggered. You are an expert on Revenue matters or I hope you are. Perhaps you ought to become one.

**Mr Varney:** I will become slightly more knowledgeable. I was recruited having spent most of my life in the private sector.

**Q53 Chairman:** The Ombudsman is an expert on maladministration. That is what her trade is. When she tells us that here is an area of public policy that is characterised by systemic maladministration and gives examples which we all know, from our own constituencies, to be the case, I think we are entitled to be rather taken aback when you come and tell us that in fact it is not systemic maladministration we are talking about here; we are talking about a system that is designed to work like this.

**Mr Varney:** I did not say it is designed to work like this. A feature of the system is in year recovery and overpayments. What the Ombudsman did was draw attention to a particular facet of the operation, which was our practice of starting to recover overpayments from continuing situations, without checking whether there is a valid reason why the overpayments should not be repaid and said that constituted maladministration. That caused me real difficulty not because I dispute the right of the Ombudsman to make such a finding but because I cannot accept that it is maladministration to operate a system in the only practical way that will provide an efficient service to protect the public purse. We physically could not operate a system that required us to check every case and see whether there was a reason, either because of official error or because of hardship, why we should write off the overpayments. That is the reality of the system that is dealing with millions of people. The fact is the vast majority of overpayments are properly recoverable. In the conversations you and we have had with the Ombudsman we have moved to understand that, and I think that is part of a process which I think is desirable. I do not think it is desirable that departments are visited with findings which then



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have practical consequences which are not well understood. I agree wholeheartedly with the Ombudsman that we are dealing with a large, complex system which will take time to change. The issue of whether we can introduce a pause and whether that would provide a better administrative and more satisfactory outcome from all perspectives is one we are looking at seriously. On the computer front, we know it will take until some time next year to get the functionality in<sup>1</sup>. The computer system is stable. Every time we make a change to it I want to be absolutely sure it does not create more problems than it solves.

**Q54 Chairman:** It has to be systemic maladministration if you are sending out award notices that you know are wrong but the computer nevertheless has to send them out. It must be maladministration if you are sending out multiple award notices with different information on them. It must be maladministration if you have a helpline where people do not know the full details of a case and cannot help the people who have queries. These are all the characteristics of this system. Whatever you say about the particular argument about the overpayment issue which no doubt we shall have, looking across the board at all the features of this system, it is a system which is producing maladministration on a systematic scale, is it not?

**Mr Varney:** That is not the finding of the report. The report was focused on a particular area. The majority of overpayments by value went to those whose income rose over £2,500. The overpayments caused by income rise, more than half, went to families who experienced income increases of more than £10,000. The system was designed so that if we did not know about those changes in circumstances we would have a case to recover. If we made an official error and the person could reasonably have known it was wrong and corrected it, then we would recover the money. If they could not reasonably have known, we would waive the overpayment.

**Q55 Chairman:** You do not tell them what the cause of the error is.

**Mr Varney:** In the overpayment case, we provide a—

**Q56 Chairman:** The form does not tell them what the cause of the error is, so on what basis do they challenge it?

**Mr Varney:** On the basis that they do not agree with it.

**Q57 Chairman:** Unless you are told the basis for an error, how on earth can you begin to challenge it?

**Mr Varney:** We write to them and say, “We think this is an overpayment and, because of the information that we now have, we have come to the conclusion that the amount we paid to you was too much. Therefore we need to recover it. It is your

right to dispute that recovery.” If that recovery will cause hardship we also have procedures in place to ensure that that hardship is not caused.

**Q58 Chairman:** What is the total number of errors that have been made in the administration of the tax credit system to date?

**Mr Varney:** We have reported publicly on the amount of overpayments.

**Q59 Chairman:** No; errors.

**Mr Varney:** The problem with the word “error” is that you have a system and part of its design criteria is overpayments. It was designed with overpayments being a feature of it. If there was not knowledge of change in circumstance and therefore we had paid out money in good faith on the basis of the information that we had which was incorrect, then we would recover it. There have been computer errors. We could identify the number of cases where the computer has generated overpayment because we had the information but it failed to register in the computer system because of a computer failure.

**Q60 Chairman:** We are not sure even what an error is?

**Mr Varney:** If you have a system which is designed with overpayments in it, that is not an error. If the system is designed to be reflective to income and change in circumstance, we do not have that circumstance and we are then told at the end of the year, “We have this amount of income that we have not told you about” or, “There has been this change of circumstance”, we go back and recalculate the award. That is part of the description of the system Parliament approved for us to operate.

**Q61 Paul Flynn:** Can I give you an example of an overpayment that possibly you would agree was an error? One of my constituents was in serious trouble mostly due to illness and work had been interrupted. I had the pleasure of informing her that a cheque for £9,000 was on its way to her bank account. It arrived from the tax credit office and this was happiness time. She paid off all her debts and various other things and bills that were outstanding. A few days later the cheque was withdrawn. Her position has been changed from one of crisis to catastrophe. Her bank account was frozen for a very long period. Would you describe that as an error?

**Mr Varney:** I would describe that as unacceptable in the circumstances you describe.

**Q62 Paul Flynn:** I was rather astonished to find that I have only had 33 cases of tax credit problems. I thought I had 3,000 at least with the amount of problems that it causes and the distress and anxiety to many constituents. Checking on just one case, almost at random, I discovered that I had written 36 letters about one single case. Forget about the surgery appointments and the long phone calls with people in tears on the other end of the phone: 36 letters. Do you regard this as a peculiar problem because you have managed, as far as MPs’ lives are concerned, to outdo the Child Support Agency

<sup>1</sup> *Note by witness:* Correction—We will not be able to get the functionality to introduce a pause in until 2007.

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whose incompetence has been on an Olympic scale in the past. You are the major crisis in our lives as far as the work of ourselves and our staff is concerned. Part of it seems to be because you are the department that you are and you are not used to dealing with people directly, like certain other departments. I remember someone telling me on the phone that she could not see what the fuss was about because the sum involved was only £10, not sensitive to the fact that for someone on a minute disposable income the difference of £10 a week was the difference between being solvent and being in crisis. Do you think there is a problem in your own department in handling cases of this kind directly with the public?

**Mr Varney:** There is a problem in that the system was not built to have a case work structure in it. Therefore, when we get an inquiry, what tends to happen is that people will have rung; they may have sent us a letter, so we are trying to pull all the information back together. The particular case that you have raised I am more than happy to take back and see if there are any lessons to be learned because I agree that is an excessive number. I sign I think practically all the letters that come to MPs personally, partly because of the ability to learn about what the issues are in a quality control sense and partly also to reflect the seriousness of the effort we are putting in to lift the performance on new tax credits. Paul Gray has been freed up from all his other responsibilities to concentrate from now to the end of the year on delivering a plan which will take us forward on the agenda which the Paymaster General spelt out on 26 May.

**Q63 Paul Flynn:** Another constituent got fed up of receiving so many letters from you that she ignored one of them and did not notice that it recorded her income as nil, in spite of the fact that you knew that she worked for Asda from nine to five and presumably you concluded she was doing it as a volunteer. There seems to be no understanding of this and consequently problems arose for her because the wrong decision was made. Is it really the situation that the answers come from a computer, not from a human being?

**Mr Varney:** There is quite a high degree of automation in the system. There were errors where people reported income but that was not recorded, but there are also lots of cases where we are not told of the change of circumstance and the importance of doing that is something which we are trying to improve in terms of the quality of our communication. We have been working with various charitable groups on redesigning some of these forms, which were originally designed to help outside the Revenue. When it started, as I understand it, they did involve people with knowledge about these areas but we have learned. It is a developing system. We have also been improving the underlying accuracy of the system. In the first year of operation, accuracy was about 78%. In the last year it was around 96%. Those are not our figures. They are audited by our internal audit department and the National Audit Office. As

people have become more familiar with the system, we have also tried to improve the guidance to our telephone operators.

**Q64 Paul Flynn:** I am sure these are typical, but another constituent was seeking an acknowledgement for a letter and the acknowledgement arrived two months later. It is the use of the English language. It informed him that his case was under urgent consideration. He received an answer to his request nine months later. How long would he have waited if it was not urgent?

**Mr Varney:** I do not know. All I can do is review particular cases. I cannot answer them because, if you are delivering a system with six million, you have the facts. If you pass them to us, we will be able to get back and answer. Clearly it is unacceptable if it takes this length of time.

**Q65 Paul Flynn:** With the picture you have presented of improvements in things as they are going, just to give you a snapshot of my constituents' cases, I had four cases in 2003, nine in 2004 and 20 so far this year. I have only taken one case to the adjudicator so presumably there is a bow wave of complaints from mine and many others that is about to overwhelm you. Is this likely to be true, because we are seeing the cases increasing.

**Mr Varney:** Having a widespread understanding that this system is built to be responsive to change in circumstance and a change in income and that, at the end of the year, there is a reconciliation of what the circumstances are and what the entitlement is, is not well understood. A lot of public discussion does not concentrate on the fact that this is a feature of the system. There is an inevitable feature—we certainly see it in the numbers of letters—that if there is publicity and people see the opportunity of challenging, some people are bound to do that. This is not the majority of cases in the Ombudsman's report. People who are in hardship should have the right to expect a proper response from a public organisation. We have been doing various things at the moment. We have adjusted the cycle of looking at last year's new tax credits. We first of all had to get everybody to reply, to tell us about their circumstances. We have a programme of outward bound telephone calls to try and encourage more people to reply. We also try and advertise so that people are aware that they need to get the information back to us so that we can process it and see what their entitlement is. Sadly, there is a number of people who do not do that. We have a programme of cutting them off from their entitlements and that produces some people who just have not got it at the top of their list.

**Q66 Paul Flynn:** We accept the complexity of the system. This was a bold, brave attempt to do something new with improving the incomes of low income families and it has been hugely successful in that direction. For the 30 odd cases I have had with problems, there are thousands of families who are better off. When we looked at the report of the Ombudsman, you accounted for 23% of the

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workload of the Ombudsman, a formidable amount, and 79% of the cases of tax credit cases have been upheld compared to a normal amount of 33%. This is a real indictment of the work of your department, surely? This is maladministration on a large scale.

**Mr Varney:** I thought the point was that this word had a precise meaning in a precise set of circumstances. Nobody takes any pleasure in the cases which are described in the report. We have apologised and we are working hard to improve. I entirely agree with what the Ombudsman has said. This is a system which is complex; it will take time and we are working towards improving it. I keep trying to explain to various parts of Parliament that is what we are trying to do.

**Q67 Paul Flynn:** I know you did not initiate the system; we did, as politicians, but is it your view that it is too sensitive, too complicated and that, if anyone is devising a system in some other area in the future, they should aim for a simpler system that does not have built into it overpayments and, for very good reasons, the complexity that it has now?

**Mr Varney:** I have been asked to operate the system by Parliament. I am trying to the best of my ability to do that. There is lots of room for improvement. The Ombudsman accurately identified an area of real debate and engagement. We are certainly on the path of trying to improve the amount of information, the accessibility and ease of operation of the system. The Ombudsman sets the challenge and we are engaged also with charitable groups as to whether even more is required on the form of engagement. We want to see the fruits of that work and see whether that will produce the sorts of improvements we think it could produce.

**Q68 Paul Flynn:** What job were you doing in the private sector?

**Mr Varney:** I was chairman of MM02, the mobile phone company. Before that, I was chief executive of British Gas.

**Q69 Chairman:** Ms Abraham, you have told us that there is something systematically maladministrative about this system and you document it in your report. There is something about the way in which this system operates that causes all these difficulties on this scale. When you hear it being said that in fact this is not the case; that there are just problems that we are working on, what is your reaction to that?

**Ms Abraham:** There is a mixture of things in here and that is why unpacking some of this with the Revenue is helpful. When we uphold a complaint, it is because we have found maladministration and injustice in that complaint. Therefore, if we uphold substantial numbers of complaints about tax credits, we have found maladministration in a large number of cases. If it is the same maladministration, it is systemic. There are a number of strands to this. The fact that all of the problems that are documented in the report and the fact that we have seen them in so many cases make the maladministration case by case, in itself, systemic. Then there is a very specific point about the automatic recovery where what I

have said in the report is that there is a fettering of a discretionary decision which in any context would be maladministrative. That is the one that is in the spotlight because, as I understand the response, it seems to be, "If you say that, that creates a real problem for us because that is the basis on which the system is designed."

**Q70 Grant Shapps:** Mr Varney, really this is not your fault at all. I imagine you must feel that Parliament has handed you this piece of legislation and asked you to get on with it and you are gallantly trying to defend a system which certainly looks to me to be in something approaching disarray. The problem is that the system is fundamentally flawed, is it not?

**Mr Varney:** I thought I had answered that question earlier. It is a system which has produced a number of considerable benefits. It is a system which is challenged in areas which were identified by the Ombudsman. We also have the challenge of having an understanding that the system Parliament has designed is responsive to change in circumstances. It is not a benefit.

**Q71 Grant Shapps:** I heard you say all those things but the reason I am picking up on it again is really twofold. First of all, HM Revenue has never, ever been in a position before of having to track things on a monthly basis. That is just not what you do, is it? You do things at the end of the year. Your system is being put under considerable change by attempting in any way to keep up with people's alterations in income on a very precise basis. You have referred to that in your previous response. What Ann Abraham has mentioned there seems to be the difference in perception between perhaps the Ombudsman and the Revenue—or maybe it is all you—and us and our constituents, which is simply that what you consider to be the system working—ie, overpayments and underpayments just happening—is for many of our constituents an absolute crisis.

**Mr Varney:** We are involved obviously with some people who we would not normally be involved with in the process, because they are under the threshold with income tax and the rest, but we do operate the PAYE system which is also responsive to changes in income. Either it picks it up because you advise us, in which case you get a new coding from the income tax system, or at the end of the year you report all your circumstances to us and we either decide you have made an underpayment or you have made an overpayment.

**Q72 Grant Shapps:** One of the features of the PAYE system is being in constant, sustained work usually and that means that those smaller changes may not make quite such a big difference. We are agreed on that.

**Mr Varney:** Fully, but there you are earning an income. I did say to you about the overpayments that the vast majority were generated by changes in income level above the 2,500 threshold and that half of those were accounted for by people whose circumstances had increased by over 10,000. That is not to say it does not cause hardship in some cases.

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**Q73 Grant Shapps:** Can you tell us the number of overpayments resulting from Revenue errors? You have been very clear on problems resulting from your customers' errors.

**Mr Varney:** We have some errors in terms of computer and—

**Q74 Grant Shapps:** I do not think we have had any numbers.

**Mr Varney:** No. In terms of the details of the errors and their values, they are included in page R18 which is attached to our annual report, which is the NAO's chapter on errors and write-offs. I can leave that with the clerk or would you like me to read it? It is not the most gripping read in the world but I am sure you get even more boring stuff than this.

**Q75 Grant Shapps:** I think you are probably in the position where we have given you legislation which is very difficult for the Revenue to try and respond to in time, but we know that there are problems that have occurred and one of those problems has been overpayment; but whilst there has been a recovery going on moneys have still been claimed. In January of this year, I think you were in front of the Public Accounts Committee and you said that systems would be put in place to stop those chasing letters. I understand there were problems with the computer in doing that and you had to trick the computer. Have you managed to trick it yet?

**Mr Varney:** Not yet. When I spoke to the PAC I said it would be the hope that we could get it in. The problem with the computer system is that we have stabilised it so it is working and functioning, but every time we change it, it is not completely transparent what the knock-on effects are.

**Q76 Grant Shapps:** I understand you worked on the system over the summer, for example?

**Mr Varney:** Not just the summer. It is a bit like the Forth Bridge.

**Q77 Grant Shapps:** You told the Public Accounts Committee that in January. We are in the third week of October and people are still receiving those chasing letters, are they not?

**Mr Varney:** We are in dialogue with the Ombudsman and considering if there is a sensible, reasonable way in which we could administratively deliver what we are committed to, some form of pause, but I do not want to agree to something which is going to generate even more chaos than we have.

**Q78 Grant Shapps:** You are a public servant. You try to do your best but this is absolutely impossible, is it not? You have gone to a select committee in January. You told them something would be done. It has not been done. We are nearly 11 months through the year from that time and we do not even have a timescale for when this might or might not happen. I am quite sure you are sympathetic enough to be able to put yourself in the position of our constituents who are being driven to distraction and,

in many cases, are in personal crisis and chaos because of this system. When can we expect something to work?

**Mr Varney:** We have so far this year done two major releases on the new tax credit system. Both of them have gone through, so far as I know, touch wood, without causing a problem. That has required massive engineering intervention of IT specialists in order to make sure that the system does not have an unintended consequence. I do not think there is an understanding that we have made a considerable number of improvements which have been risk free. We have derisked the introduction of those interventions. We are looking to be more confident so that, when we want to do something on the computer system, it does not generate another wave of misunderstandings, of angst and problems for people. We are all committed to make sure they do not suffer this.

**Q79 Grant Shapps:** Neither of those interventions are to do with suspending the disputed recoveries?

**Mr Varney:** No.

**Q80 Grant Shapps:** Do we have a timescale?

**Mr Gray:** Let me explain where we are on the suspension issue. On our latest planning for major IT releases, we think we should be in a position to put in place in 12 months' time a fully computerised, automated process for operating the sort of suspension mechanism that David mentioned.

**Q81 Grant Shapps:** We have to wait another year?

**Mr Gray:** For a fully automated, computerised system. In the interim, we have been urgently working over the course of the summer as to whether we thought we could come up with a part manual/part computerised way of doing this, which is not fully integrated into the system and which will require quite a lot of manual interventions, that we felt was sufficiently robust and sufficiently safe and, if we introduced it, it would generate a significant net improvement in the position rather than generate additional problems of the sort the Ombudsman was talking about. We are still in a position of urgently seeing whether or not we are going to be able to do that in a much shorter timescale than a fully automated process in 12 months' time.

**Q82 Grant Shapps:** Given that it is going to be another year until our constituents stop being chased where there is a disputed recovery, what should our message be to constituents who come and tell us, "I am being chased. I have been disputing this. I am getting more and more concerned about these chasing letters getting more and more vicious"? What should we be telling them? Do not worry? Throw it away? Paper the wall with the letters?

**Mr Gray:** You certainly should not be saying that. What we are very conscious of is, early this summer, we had a very large backlog of disputed overpayment cases to be dealt with. At one point this had reached well over 100,000. One of our biggest priorities over the course of the summer has been to

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move to resolve that backlog of disputed overpayments so that we are bringing right down to a minimum the number of people who have raised a dispute and where recovery is underway but we still have not resolved the substantive issue. We have made pretty substantial progress over the course of the summer. That backlog is now down to about a third of the size that it was. We are looking to drive that down much further over the coming weeks.

**Q83 Grant Shapps:** The message to the constituent would be?

**Mr Gray:** If you have not yet had a decision in relation to your dispute, you are part of a significantly declining backlog and we are aiming to get that substantive answer to you as soon as we can.

**Ms Walker:** It is also true that if the recovery of an overpayment causes hardship to a household and they let us know of that, there are things we can do very quickly to make sure that we restore the payments and give them extra help on hardship grounds.

**Q84 Grant Shapps:** I certainly have some individual cases that fall into that category. 90,000 official errors, according to that document you are holding up, just to get that onto the record.

**Mr Varney:** 88,000.

**Q85 Julia Goldsworthy:** You said in the press over the summer that you need to run a few cycles to see how successful this policy will be and, if it appears that there will be problems in discharging the policy, you will have to look at potentially changing it. Given everything that we have heard today about the problems in the Ombudsman's report, I wonder whether you consider that a change of policy may be the most appropriate way to overcome these problems. Is the Revenue actively looking at the case for returning to fixed payments? Are they conducting any research into looking at what effect the uncertainty of payments is having on people on low incomes, what impact it is having on their decisions about work and those kinds of choices? In talking to a local Citizens' Advice Bureau worker, they said, "How can we give people advice? We can give them no idea of what they can expect their income to be, whether it will make them better off or not" so they feel that it is impacting on decisions about whether they take up work and things like that.

**Mr Varney:** I think I have answered the question about policy twice.

**Q86 Julia Goldsworthy:** You are not looking to change the policy?

**Mr Varney:** I have answered that particularly. What we are doing, partly with our own experience internally, is talking to voluntary agencies and engaging with the Ombudsman. In each of these cases with a population of approximately 6 million—5.8 million to be pedantic—in terms of people who are in receipt of new tax credits, for those where the system is working really well, is there anything else we can do? For those where it is really

working badly, what is the journey of continuous improvement? What things can we usefully do? What are the priorities? What are the choices that have to be made? This is the sort of process of consideration which is our terrain, which is the operation of the policy, making sure it operates as Parliament intended.

**Q87 Julia Goldsworthy:** There have not only been concerns about the information that recipients receive; I think there has been some worrying evidence of Parliament finding it difficult to get hold of information as well. The Ombudsman reported that you failed to give a complete picture and we have had PQs where, just on the state of the IT system, there have been problems in giving us information. The Paymaster General refused to give any information on the estimates of the level of overpayments in 2004–05, even though it had been published in the National Audit Office a few days before. Again, we have no information on the number of people who have excess payments in year. Quite often it is the suspension of payments which causes the most immediate problems. Do you think this is a one-off problem in terms of providing information or is it institutional?

**Mr Varney:** I see every parliamentary question that is asked of ministers. There is no shortage of questions being asked about new tax credits. I assume that is where Parliament is working. Can I explain what the provision is in the accounts because there seems to be some confusion and it might be helpful. For the first time we have been required, along with other government departments, to produce essentially a balance sheet. Up until now, our accounts have really been profit and loss accounts. We are now coming into the same mainstream that PLCs have been in for some time, which is having a profit and loss account and a balance sheet. We have to address the question of what the debts are and what we think are the right provisions. You are trying to present an accurate picture of the state of HMRC at the time when the accounts are drawn up. We have no experience of the recovery of these overpayments. We have nothing to rely on. We have no real parallel, though we have talked to DWP, about the scale of recovery. What information have we available? We have used our accountants and statisticians to take a best guess at what we think might be a worst case outcome. We did that for tax credits in 2003–04. We could think of no better number for 2004–05 so we doubled it. That is the provision. It is not a write-off. What it is saying is that our view at the moment is that the worst case is that we will not be able to recover this money. It is not a forecast; it is a provision.

**Q88 Julia Goldsworthy:** Can I ask you about the writing off of overpayments and the reasonableness test? I am getting feedback that quite often the write-offs are due to administrative convenience. If you did get a case where you have 36 letters from an MP, it is written off because it is too much hassle to continue to pursue it and judgments are not being made in terms of hardship. I wondered if you could

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clarify what the streamlining procedures are for you making these judgments and what the tolerance level is. If it is below a certain amount, do you write it off? How has that changed since they were introduced?

**Mr Varney:** We certainly see a case for trying to make more transparent what hardship and reasonableness mean. If you have cases where you think our hardship policy is not working I really am very interested and would appreciate hearing the details of the particular case, because we have designed the policy to be responsive if there is an outcome which drives people into intolerable situations. We have had to make judgments in the case of some of the computer errors that we have had, as to whether the cost of chasing something is greater than the money we are trying to chase. We have some rules of thumb about what is a reasonable basis. If we so blitz somebody with information, do we contribute to them not understanding what their entitlement is? As an accounting officer, I have to make a value judgment about what is value for money and what is fair. MPs in that must rank as other citizens in terms of their claim on the public purse.

**Q89 Julia Goldsworthy:** This reasonableness test is under review as part of the review of the code of practice? Is that right?

**Mr Varney:** Yes.

**Q90 Julia Goldsworthy:** What progress has there been on that?

**Mr Gray:** We are actively working on that. We are in very active discussions with a whole range of external stakeholders, voluntary sector bodies and so on. We are currently working on seeking to reach conclusions by around the end of the calendar year. In that, we are particularly focusing on whether we can bring rather greater transparency and clarity to the criteria to be used in judging reasonableness.

**Q91 Chairman:** What are your criteria for writing off?

**Mr Varney:** I do not think I want to go beyond whether it was an official error on our part. Was it reasonable that the person on the other side should believe that this was accurate information? It builds on some of the tests applied in other parts of government where there is some duty on the individual to check the information and see whether it is correct. That has been the balance of the test that has been applied and there has been one where, in some particular cases, we have made judgments about the cost of recovery in certain circumstances.

**Q92 Chairman:** The Ombudsman said though that the information people were getting was so complex and unreliable that to apply that test to it is not reasonable.

**Mr Varney:** The discussion we have helpfully had has got us to a point where there is common ground on searching for an opportunity to give a pause so that people can reflect on whether what we are saying is correct. I go back to the statistics I have given on overpayment. If your income has gone up

by more than £10,000, I would have thought for most people it is reasonable that they should have known of that change of circumstance.

**Q93 Mr Prentice:** Do your people keep a file note of every telephone conversation they have with members of the public who query an award? "I think you are paying me too much" and the person at the Revenue says, "No, if that is what we say, just put it in the bank and spend it." Is there a file note held of every single telephone conversation between staff and members of the public who query the level of their award?

**Mr Varney:** We now have a system which records telephone calls.

**Q94 Mr Prentice:** When was that brought in?

**Ms Walker:** The recording has been in for some considerable time. We are able to go back over all the phone calls that we have had.

**Q95 Mr Prentice:** I have constituents who tell me that they reported their concerns to the Revenue; they thought they were getting too much and they were told to put it in the bank and spend it. If there is a file note, the problem can be easily resolved and you tell me the system has been in place for a long time.

**Ms Walker:** Yes.

**Mr Gray:** If an overpayment is disputed and there is a doubt about what exchanges have taken place, part of our procedures for a full investigation, looking into that dispute before we reach a judgment on it, quite often involves calling back the telephone records from the contact centre network and listening to validate what was or was not said.

**Mr Varney:** This is not gee whiz, Dr Strangelove, press a button and here it comes. There is no digital recording system on this scale that is like that, so it requires detective work. It requires obviously the cooperation of people, some of whom will have very clear recollection of when they made the phone call. Other people live busy lives and cannot remember so we have to search.

**Q96 Mr Prentice:** It is a pretty crucial point though, is it not, when people who have been overpaid—I am labouring the point.

**Mr Varney:** You are making a good point. That is why we try and do the investigations as comprehensively as we can. If it was a paper based system, we would have to have document readers and we would have to scan because on this scale, with the scale of interaction we have, we have telephones, we have inquiry centres and people will come to different places.

**Ms Walker:** We have had problems in terms of having to access telephone calls by physically retrieving tapes and replaying tapes. We are now looking at whether we can digitise those recordings so that they are accessible through the computer system. We are actively looking at whether we can make that easier to check.

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**Q97 Chairman:** When the Prime Minister told Parliament back in June, “We will not seek to get the money back if the error is on the part of the Inland Revenue”, that turns out not to be quite the case, does it not?

**Mr Varney:** The policy which we have been pursuing is the test I have put forward, which is that we are recovering where there is an official error and where it would be reasonable to expect the claimant to have known that there was an error.

**Q98 Mr Burrowes:** On that reasonable test, you also though, as I understand it, accept the recommendation that the information could be improved because you are seeking, as the Paymaster General said, to improve that information and looking at the feasibility of that for the future. You do accept that the information could be improved?

**Mr Varney:** Yes.

**Q99 Mr Burrowes:** By that there is a question mark, is there not, when one looks at existing claimants in terms of overpayment and excess payments? The present system could be improved.

**Mr Varney:** I think virtually every system I operate in HM Revenue and Customs, dealing as we do with the affairs of every individual almost in the land, almost all of our forms could be improved, but there is not going to be a tax amnesty because a form is going to be improved.

**Q100 Mr Burrowes:** Effectively the information that is there in the present system is, you would say, adequate for people to come to a conclusion as to whether they dispute the amount or not?

**Mr Varney:** We believe that the system can be improved. I think it is a case by case basis.

**Q101 Mr Burrowes:** Do you think the information is adequate?

**Mr Varney:** The information that we set down was done in partnership with voluntary groups and organisations who were interested in these areas. We tried to test it with other people. Like all big systems you learn as you go along. If you look at the actual statistics on overpayments, £10,000 is quite a lot of change in circumstance and one could reasonably expect that that would be fairly obvious on a form.

**Ms Walker:** If I can help on the detail and the way we operate the reasonable belief test, we do expect people to be able to check on the notices that we send that we have correctly recorded the information that they have given us—the number of children in the household, the amount of their childcare costs, that kind of thing. We do not expect people to check the detailed calculation of their award because we do not think it is something that in all cases people would be able to do. If it is grossly out of line with what they might have expected, we probably do expect them to have queried it. What we are looking to do in the review of our code of practice is to be a little bit more explicit about what we expect people to be able to check on the information we sent them and what we do not expect them to be able to check.

**Q102 Jenny Willott:** I completely appreciate that if somebody has income and the number of children completely wrong that is reasonable for them to check, but when individuals can get as many as 20 letters all of which have completely different information on, do you not feel that the balance for identifying whether what they are getting is reasonable or not should be on the Revenue, not on the individual concerned? I get a significant number of people coming to me with tax credit problems so I probably see more of the forms than the individuals concerned. I look at half of them and think I have absolutely no idea what you are supposed to be getting. I do not know whether this one is too much or what could possibly be considered a reasonable amount. When you are doing a review of the code of practice, are you looking at the balance of who should be responsible for making sure that an error is picked up? I am sure that others here would think that at the moment the system is too complex to expect the test of reasonableness to be on the client rather than on the Revenue. Are you looking at that in the review?

**Mr Varney:** No, we are not looking at changing the balance. What we are looking at is whether we can improve the way in which the information is presented, the clarity with which it is presented and to eradicate duplicate notices, to see whether it is possible to provide a story of what is happening in a coherent way. That is to enable the individuals to better fulfil their responsibilities. In some cases, we feel that we will be looking to work with voluntary groups to improve the skill with which that can be done and provide practical help.

**Ms Walker:** We do already take account of the number of award notices somebody has received in assessing whether it was reasonable for them to have understood what was happening to their award. There have been cases, as you say, where people have received very large numbers of award notices and we do take that into account in that decision.

**Q103 Jenny Willott:** I had a case the other day where the individual concerned had notified that she had had a second child and the amount of tax credit she was getting went up by double the amount it should have done because they had marked down that she had twins. As far as she was concerned, the amount just went up. Now she is getting something like £4,000 or £5,000 that is trying to be reclaimed in overpayments. Most people see income going up or coming down, depending, but obviously if she got three times the amount then maybe it would have been a bit questionable. Unless it is very clear what you should be able to expect for different elements, it is very difficult. Would that be taken into consideration?

**Ms Walker:** If the form showed that she had two children when—?

**Q104 Jenny Willott:** The form did not show that she had children but the amount that she was given was allocated for two children because it had been entered twice.

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*Ms Walker:* I will look at that case.

*Mr Varney:* Send us the details and we will look at it.

**Q105 Jenny Willott:** Can I just ask one other question about the overpayments? When the Ombudsman asked about the causes for overpayments you said that you could not easily identify the reasons why an overpayment arose and to examine each award would be prohibitively expensive. If you do not know the breakdown of what is causing the overpayments, how can you expect to learn lessons from it and identify how you can solve it in the future? Are you expecting to be able to produce that information?

*Mr Varney:* The point is that the system will respond to the latest information it has. That is what the automated system does. That then creates a set of implications for the individual as a result of the new information. The errors and omissions that are in the system we are measuring separately to find out what those errors are and try to eradicate them. Overpayments as such are part of the system. What the Ombudsman talked of was a system where, where there was a recovery, the client was clearly notified that there was going to be an over-recovery and the reasons that had given rise to that over-recovery so they could dispute it.

**Q106 Jenny Willott:** I completely appreciate that a lot of the overpayments are a natural part of the system. Therefore, if you are identifying the reasons for overpayment, a number of them will be completely valid reasons why there was an overpayment and why it should be clawed back, but a number of the overpayments will not necessarily be due to valid reasons or reasons which would then generate a clawback. Are you going to be able to gather the information as to the reason for an overpayment in every case?

*Mr Varney:* We have a programme which I presented to the PAC, which is trying to see how much error there is in the system in terms of payments. We are at an early stage of doing that. It takes time because of the way the system operates. You pay in year. Then you have to work out what the circumstances are in the notification. Then you have to work out whether the right amounts were paid. We are looking to see what the error rate is and then to create a performance improvement programme which will drive down the rate of errors in the system.

*Mr Gray:* One other thing which I think is relevant to your question: at the time we send out renewal notices in the annual cycle, we are looking to provide additional information, with the shorthand-type term of playback, seeking to summarise in one place, on one piece of paper, at the renewal time, "Here is the sequence of events and the reasons why we think your entitlement has changed and, therefore, by implication, why you may in the previous year have had an overpayment or an underpayment." Again, to automate that process is extremely complex and we will not be able to do that unfortunately for the 2006 renewal cycle. We are looking to have that facility in place in good time for the 2007 renewal

cycle. Once each year everybody will be given a comprehensive statement of our understanding of what circumstances have changed during the course of the year, which would give a single opportunity for claimants to say, "Yes, we recognise that" or, "No, we do not recognise that".

**Q107 Kelvin Hopkins:** Over the last couple of hours I have become convinced that there is, as I suspected, an inherent incompatibility between your two roles in the Revenue: collecting taxes on the one hand and, as you put it, protecting the public purse against the non-tax payers, the evaders and bringing the money in for all the good things that government can do with it; and on the other hand, a duty of concern to poor people who do not have very much money, to make sure that they get what they need to live. Is it not the case that those two roles are, culturally at least, incompatible?

*Mr Varney:* I do not think a Revenue or Customs organisation that is compassion free and uncaring is going to do even its job of collecting revenue squarely. The reality is that we deal with people, yes, who are prosperous but we also occasionally deal with businesses in great difficulty, where we try and help them to recover. This is bringing in a new group of people but it is a challenge. I think we have bits of our culture which we can call on as strengths. We are learning; we have to improve. The vast majority of the population will touch some part of HMRC in their daily life; Customs and Excise officers too. I do not think we have a future as a desiccated calculating machine that just goes round collecting money. That will not be the sort of Revenue and Customs that is going to attract good people to join it.

**Q108 Kelvin Hopkins:** You have more sympathy with those who evade taxes than I have.

*Mr Varney:* I think you will find it is quite shallow.

**Q109 Kelvin Hopkins:** You have been brought in by the government from the private sector, British Gas, chasing people who do not pay their bills, getting rid of the dross in companies to make them lean, mean machines that make good profits for shareholders, and then coming to a system which has this duty of care for the citizenry, the poor, the people who in the past you have not really had to worry about too much because they do not have much money and they do not make much profit for you. I am trying to emphasise this point. Would it not be better to have a system employing people from a culture of care and concern? Okay, one must have good finances and accountants to chase such staff, to make sure they do not waste money but, on the other hand, they would be concerned about the poor and your system is not designed to do that.

*Mr Varney:* Can I try and do two things? I can partly defend the honour of British Gas. To remind you, when I was chief executive of BG Limited, Transco did two things one of which was to spearhead a programme on energy poverty to bring more people into gas and off meter paid electricity. The second was to have one of the most active corporate engagement programmes in the country because it



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touches so many people in the country. You have to deal with that as part and parcel of your business. I think there are a lot of things in tax credits which have delivered a better outcome for large numbers of people, but not for everybody, and it can do better. I do not think there is an argument that it is a different culture. I think it is a sort of defence mechanism. We have a significant challenge. We want to work on it and we want to improve and have better outcomes.

**Q110 Kelvin Hopkins:** There are hundreds of thousands of people who could claim tax credit, but do not. The government is perhaps not terribly enthusiastic about encouraging them to claim that because it would cost money, but the fact is that millions of pounds are not paid out every year because people do not claim. Would it not be appropriate to have free accountancy advice, free services, for all these people to make sure that they claim? We get accountancy provided for us to make sure we do not pay too much tax as Members of Parliament. It is not much more important surely to have free services provided by the state to make sure that people claim everything and are not just left to languish in their poverty?

**Mr Varney:** Thank you for the advice about how MPs handle their tax affairs. That will be very helpful in my other role. I certainly have more discussion I think in the Treasury with the Paymaster General about whether we are communicating this policy in a way which does reach the parts that other benefit systems have been unable to reach. This a decision of government and Parliament that there should be this system and the expectation and hope is that it can help in the transformation of the lives of a number of our citizens. That is what we have to do. We have to have a view which says: not only do we have to get the system to work but we want as many people who can use the system to use it. That is what we are voted money by Parliament to do and that is what I shall be judged on.

**Mr Gray:** Although we do not have free accountancy of the sort you describe, we do a whole range of outreach promotional activity, working with the voluntary sector and other bodies. We have advertising campaigns, all of which are geared to the outcome Mr Hopkins has talked about.

**Q111 Julie Morgan:** At what stage do you threaten to start court proceedings in the recovery stage?

**Mr Varney:** Right at the end. We have a debt management operation which is probably one of the biggest in the country, which will go through a series of processes. Obviously we try and avoid going to court.

**Q112 Julie Morgan:** In the present circumstances when we know there is so much difficulty, would you say there was a case for not threatening court proceedings because this causes extreme distress to people? I have a case here of a history of 12 months where letters have been going backwards and forwards and no information has been coming,

where it has ended up now with the threat of court proceedings and the family are almost at a state of collapse.

**Mr Varney:** Can I look at the case?

**Q113 Julie Morgan:** Yes.

**Mr Varney:** I cannot make general policy out of a single case. I will look at the case and see what I can learn from it but I said to the PAC that the largest overpayment was £19,500. If the people who received that were not prepared to pay it back, I would be dilatory if I was not pursuing all the options that are available to me.

**Q114 Julie Morgan:** In the case I mention it is a large amount. It is £23,000, but if you look at the history of the letters back and fore it is a matter of great concern that they are unable to get information. They are unable to find out. One day they will have a demand for £15,000; the next day I think they had a demand for £9,000. It varied the whole time. They could not get the information. To end up with threatening court proceedings when you know that the system has so many problems—would there not be a case for saying, “Do not let us do that in the present circumstances?”

**Mr Varney:** The argument is that we go through quite a process. If this one has got through and it should not have done, let us look at it, but I think it would be incorrect to withdraw from using all remedies available to us to collect if we think this should have been known as an overpayment. I do not take any pride in it. We obviously want to find other ways of doing it.

**Q115 Julie Morgan:** Do you have any figures for what percentage of customers would have letters threatening court proceedings?

**Ms Walker:** It would be very small numbers. In a lot of cases we are negotiating extended terms and time to pay.

**Mr Varney:** In the year to date we have had 42,500 requests for time to pay. We have granted 40,000 of them. The rest are in the system. I think we currently have 168,000-ish, plus or minus, time to pay agreements. We do offer time to pay agreements so we are presumably going to court on those few cases where we cannot get a reasonable outcome.

**Q116 David Heyes:** Several times you have mentioned working with what you call voluntary groups in helping to find solutions to some of the problems that you have. What do you have in mind when you say that? Who are they?

**Mr Varney:** Citizens Advice Bureaux, the Child Poverty Action Group.

**Mr Gray:** One parent families. We also work with the Ombudsman and the adjudicator. There is a range of other specific voluntary sector bodies included.

**Q117 David Heyes:** I am more interested in the nature of the work that you have in mind to do with them that is going to help the people on the receiving end of the problems.

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**Mr Varney:** To see what their experience is at grass roots level, things that we do not hear directly; sharing with us feedback and playback on innovations, ideas for improvement in the system and unintended consequences of well meaning interventions which then produce trouble at the other end.

**Q118 David Heyes:** Those are very worthy things but what are you actually doing? They might just be fine words. The CAB, for instance, have been more critical than the Ombudsman has been of the errors and problems that have been created through your work. You are expecting a comfortable and harmonious partnership with them to help resolve these problems? What are you doing?

**Mr Varney:** Everybody we work with has a view about how we could change our behaviour. It is an institutional feature of a revenue system that hardly anybody you work with is going to volunteer that the system works particularly well in their set of circumstances. That is a feature of every day life in the affairs of Revenue and Customs. Things like the redesign of COP26, the code of practice, the forms, those are practical things we are talking to them about.

**Q119 David Heyes:** I have had a briefing note just this week from the CAB that lists all the things they would wish you to do. I am sure you have seen it yourself. What concrete things are happening from this week onwards for you to have a constructive dialogue with the CAB and all the other organisations that you mention to help to bring about the changes that you have talked about; or is it just that you wish that this might happen? What is the mechanism?

**Mr Gray:** There is a number of formal consultative fora on which we exchange views. We look at draft documentation that we are thinking of reviewing and invite comments back. In relation to the Citizens Advice Bureaux, we are specifically discussing ways in which we might change our outreach procedures in order to make it easier for more vulnerable families to claim and to avoid the sort of difficulties we have been discussing this morning. There is also a range of things which Citizens Advice and other voluntary sector bodies might wish to urge the government to change the structure of the policy. Those are not issues we are in dialogue with them on. They are broader policy matters, but we are discussing with them detailed operational issues around the way in which the policy works.

**Q120 Julia Goldsworthy:** The Child Poverty Action Group are considering legal action over the practice of automatic overpayment recovery and I wondered if you had taken legal advice and whether it supported you on that.

**Mr Varney:** Yes, we have taken legal advice and the Ombudsman made very clear the difference between a legal position and the judgments which she makes. We have taken legal advice which we are prepared to defend if we are challenged.

**Chairman:** This may not be our only meeting because we do take very seriously a report of the kind the Ombudsman has made. We note the fact that about a quarter of her caseload at the moment is concerning tax credits and the fact that she is upholding twice her normal strike rate means something is seriously wrong with this system. If she tells us next year that she is still getting complaints of this order without outcome, we shall have to ask you to come back and talk to us further about it and about these improvements that you have said are in hand today. With that, thank you for coming along this morning and talking to us about this.

ISBN 0-215-02717-5



9 780215 027177



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