

# The Adjudicator's Office

Annual Report 2006



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# Foreword

by the Adjudicator Dame Barbara Mills DBE QC



I am pleased to present my Annual Report for the year to 31 March 2006, the seventh report covering my work as Adjudicator and the thirteenth concerning the work of the Office.

On 18 April last year, the two organisations from whom we receive most of our complaints (Inland Revenue and Customs and Excise) merged to form Her Majesty's Revenue & Customs (HMRC). Last year, I said that delivering the expected benefits from this merger would pose major challenges to the new organisation. I said that my Office would play a supportive role and, in particular, would encourage the new organisation to recognise the need for excellent complaints handling as a key aspect of their customer service strategy.

After the merger, the new organisation moved quickly to implement a radically new structure. Despite the speed of these changes and their impact on a large number of diverse areas of work, I am pleased to say this was done in a way that minimised disruption to the existing complaints handling processes and hence to complainants. How complaints should be handled within the new organisation has subsequently been the subject of an internal review. We will continue to work with HMRC to monitor progress and

help to ensure successful implementation of the review's recommendations.

I expressed strong concerns last year about the tax credits system and how, after two years in place, it was still not working well for many claimants. During the past year, we have continued to receive a large and increasing number of complaints about tax credits, covering the same range of problems as highlighted in my last report. We upheld fully, or at least partially, 74% of those complaints that were dealt with by the Tax Credit Office (TCO). Last year I also, however, referred to a growing recognition within the new organisation that the system needed to improve.

I am pleased to report that this welcome development has continued. In May 2005, the Paymaster General announced to the House of Commons a series of measures to tackle many of the problems highlighted in my last report.

A programme of work is now underway within HMRC - including important changes in how the TCO handles complaints - that should, over time, deliver significant improvements. I say "over time" because inflexibility with the IT system constrains the quick delivery of some of the most desired changes, so there may be some delay before we see the full impact of this programme of work on the number and kind of tax credits complaints coming to us.

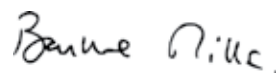
This year, once again, saw little change concerning complaints about either the Valuation Office Agency or The Insolvency Service. I am pleased that the Public Guardianship Office (PGO) took steps to address the areas we noted in last year's report where they might improve their customer service. We did not fully uphold any of the complaints we investigated this year and, where we upheld complaints in part, it was usually only because of minor handling errors.

Following the Mental Capacity Act 2005, the PGO is due to become the new Office of the Public Guardian in April 2007. This will mark a significant change both in the Office's remit and in how it will work. I look forward to working with the PGO in the coming year to ensure that any disruption to complainants during the transition is kept to a minimum, and that the complaints handling arrangements of the new Office work as well as possible.

***"A programme of work is now underway within HMRC - including important changes in how the TCO handles complaints - that should, over time, deliver significant improvements."***

Finally, I would like to comment on my Office's performance over the last year. Due to the large increase in the number of tax credits complaints coming to us (an increase that began towards the end of the previous year), the Office this year has had to deal with many more complaints than ever before. During the previous year, we settled 581 investigation cases. This year we settled 926 cases. At the same time, we reduced both the number of cases we settled that were older than 44 weeks from 10 the previous year to three and the average turnaround time for settling all investigation cases from 20.74 weeks the previous year to 19.70 weeks. Customer satisfaction levels remained high.

This was achieved without extra resources, which testifies both to the hard work and commitment of all the staff over the last year and the Office's willingness to consider and adopt successful new ways of working. I would like to thank all the Office's staff for what has been a considerable achievement. In the coming year, we will continue to seek improvements in the way we work so as to secure both the best and most appropriate outcomes for all the complainants who come to us and to give the best possible service and value for money to the organisations whose complaints we investigate.



**Dame Barbara Mills DBE QC**  
The Adjudicator

# Role of the Adjudicator's Office

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

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

Our aim is to deliver an excellent service that is:

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

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

Where possible, we try to resolve the complaint quickly. Becoming more flexible in how we secure the best and most appropriate outcome for the complainant has been key to our success over the last year in improving productivity. If the case cannot be resolved quickly, however, we will undertake a full investigation.

We measure complaints about the organisations against their own published standards and Codes of Practice. We look to ensure that these have been followed

correctly. While there are some areas that we cannot consider, such as disputes about aspects of departmental policy and matters of law, we do investigate complaints about:

- mistakes
- delays
- poor/misleading advice
- staff behaviour
- the use of discretion

We resolve complaints by one of two methods:

- mediation
- recommendation letter from the Adjudicator.

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

It is not always possible, however, for us to match a complainant's expectations with

the organisation's offer of redress. Where this happens, the Adjudicator will look at the case in detail and reach a decision on how the complaint should be resolved.

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

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

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

### **Working with the organisations**

A key aspect of our work is helping the organisations to improve their service to the public. To ensure that mistakes are not repeated and that lessons are learned, we monitor our results, identifying trends and particular areas of concern. We feed this information back to the organisations, prompting them to make improvements to their service. For example, during 2005/2006, we worked extensively with HMRC, both in helping to identify areas for improvement in the tax credits regime and in ensuring that complaint handling did not suffer during a period of rapid organisational change.

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

***“A key aspect of our work is helping the organisations to improve their service to the public.”***





# Overview

## HM Revenue & Customs

HM Revenue & Customs (HMRC) became a legal entity on 18 April 2005. Over the past year, we have worked closely with them to help to improve the tax credit system. HMRC now has a major programme of work in place to take this forward. It may be some time before all of the required improvements can be implemented, however, so handling problems are likely to remain for a while for some claimants.

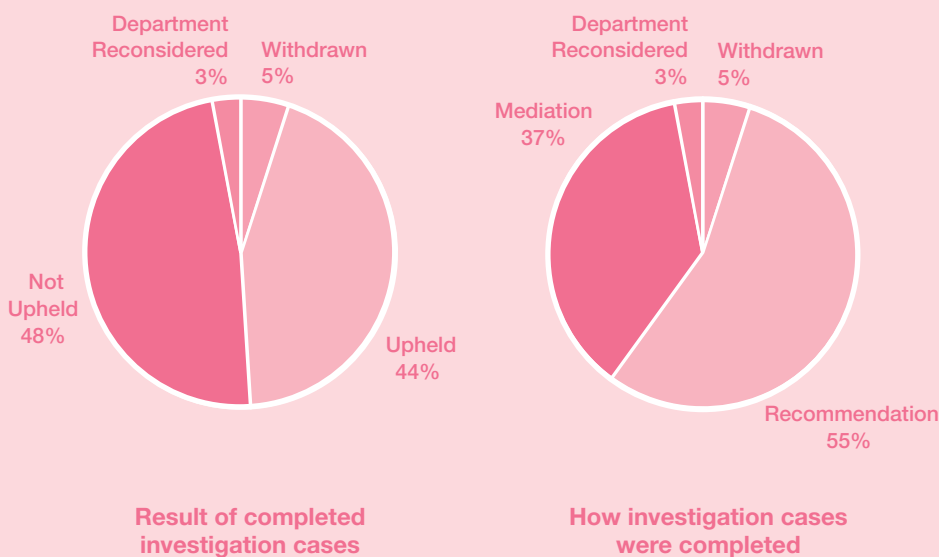
Our working with HMRC has focussed in particular, therefore, on improvements in complaints handling and how claimants are dealt with when things go wrong. This has resulted in some positive developments, which are described over the following pages.

The new organisation has, more widely, set itself a challenging agenda. We look forward to building on the success of our working arrangements with HMRC on tax credits to help address problems as they emerge elsewhere and to add value to HMRC's business as appropriate.

### Official Error Provisions

The "official error" provisions of Extra Statutory Concession A19 (ESC A19) and Code of Practice 26 (COP 26) - *What happens if we have paid you too much tax credit?* between them continued to feature extensively in the complaints that we investigated. Both provisions cover the sensitive issue of whether HMRC can recover either tax owed, or overpaid tax credits, where there has been an HMRC error.

### HMRC investigation results



*“We look forward to building on the success of our working arrangements with HMRC on tax credits to help address problems as they emerge...”*



Under ESC A19, HMRC can give up the arrears of tax where they have failed to make proper and timely use of information that they have received. ESC A19 defines the circumstances in which this can happen. A crucial additional condition, however, is whether it was 'reasonable' for the taxpayer to consider that their affairs were in order. Similarly, under COP 26, HMRC will not recover overpaid tax credits where the overpayment arose from their error, but only where it was reasonable for the claimant to consider that their award was correct.

In most of the complaints that we investigate concerning ESC A19 or COP 26, it is this "reasonable belief" test that is the deciding factor. The onus is on the taxpayer or claimant to read carefully the relevant notices and to check that the tax due, or the award, has been calculated on the basis of correct information. As a result, in many cases, we cannot uphold the complaint because it is clear that the complainant did not take notice of the relevant instructions and guidance.

In particular, this is becoming more and more the norm with COP 26 (disputed overpayment) cases for reasons described later in this overview.

In the case of ESC A19, the tax is legally payable and, in the case of overpaid tax credits, the payment is normally fully recoverable. In both cases, the complainant, however, is often left with a sense of grievance. In ESC A19 cases, because this liability was only belatedly drawn to their attention, the arrears may have become quite substantial. In COP 26 cases, claimants will have a similar sense of grievance because the overpayment resulted from HMRC errors.

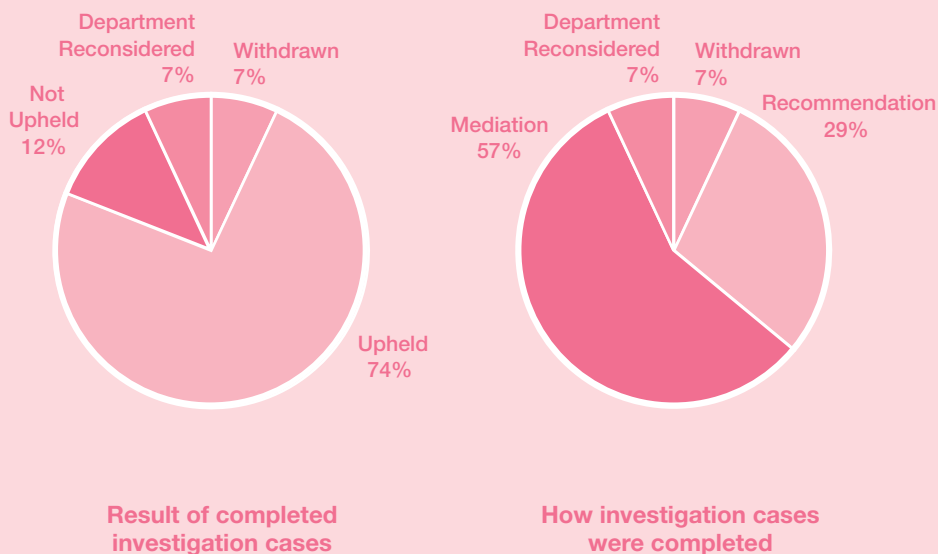
### **Tax Credits**

The highest proportion of complaints that came to us during the year continued to concern tax credits and the numbers received by us increased dramatically as the year progressed. We took up 569 tax credit complaints for investigation compared to 195 last year. Most of these complaints, at least in part, now concern disputed overpayments. The Tax Credit Office (TCO) recently cleared its backlog of disputed overpayment cases and it is likely that that is the main reason for the recent surge in such cases coming to us. Last year's report highlighted the following problems experienced by claimants:

- IT problems and processing errors
- Poor accessibility and communications
- Disputed recovery of overpayments under COP 26
- Lack of a 'caseworking' facility in the system
- Poor complaints handling

The picture this year was very similar. Of those we settled, there was a reduction from 86% to 74% in the number of complaints that we upheld, either fully or partially, in the complainant's favour. This is still a very high figure but a welcome reduction nonetheless, due largely to a fall in the number of complaints where it was appropriate for HMRC to write off an overpayment.

### Tax Credit Office investigation results



*“We took up 569 tax credit complaints for investigation compared to 195 last year.”*

#### Disputed overpayments

Where claimants receive multiple award notices, often showing different amounts as payable, it can be difficult for them either to establish their correct entitlement, or even that they are being overpaid at all. In many of these cases, therefore, it is appropriate for HMRC to write off the overpayment.

We investigated fewer complaints this year, however, where multiple award notices were an issue and this was a welcome development. Instead, we saw an increasing number of complaints where overpayments had arisen because the claimant's award was based on incorrect information.

In such cases - typically where the claimant has failed to check that their award notice shows the correct income details - it is unlikely that the provisions of COP 26 could apply, as it would not be reasonable for the claimant to consider that their award was correct, based on all of the information contained in their notice.

Improvements in the TCO's administration of COP 26 have played a part in reducing the cases that we investigate where there has been a failure to consider appropriately the grounds for writing off an overpayment. The introduction of a facility to suspend collection of overpayments has been another important step, as was a significant reduction in the number of cases coming to us where there had been manual payments.

A particular problem, however, has been how the hardship provisions, as set out in COP 26 (which were not, in themselves, clear), had actually been applied. Towards the end of the year, we were still seeing complaints where the TCO were not identifying hardship cases, but we are pleased to note that there has been some improvement recently in this regard.

The reduction from 86% to 74% in the number of complaints that we upheld, either fully or partially, in the complainant's favour does not fully reflect the fall in the number of cases where it is appropriate for HMRC to

write off the overpayment. This is because, in many such cases, we still partially upheld the complaint because of other handling issues of the type set out previously.

The Pre Budget Report (PBR) of 5 December 2005 announced a rise in the level of household income growth required to trigger the recovery of an in year overpayment from £2500 to £25,000. This should, in due course, reduce significantly the number of disputed overpayments that arise. The PBR changes facilitate other administrative improvements which - coupled with planned improvements in the clarity of award notices, the wording of COP 26 and better communications to claimants at the early stage of the dispute process - should also, over time, impact positively on the number of disputed overpayments and related problems.

### **Complaints Handling**

Many complainants come to us because, when something went wrong, or even when they simply wanted more information, they were unable to engage effectively with HMRC to resolve matters. As a result, they lost trust in the system and escalated their complaint here. Many of these complaints could have been resolved earlier if there had been in place an appropriate level of customer support to facilitate effective communication and manage expectations.

An internal review of the TCO's handling of complaints was undertaken last autumn. As a result, new processes and changes in how this work is organised have recently been put in place. A key feature of the new approach - and one which directly addresses the points made above - is that the person responsible for dealing with the complaint will now also act as a single point of contact for the complainant, beyond resolution of the complaint and up to the time when all the necessary system fixes are in place.

At the time of writing, it is too early to judge the effectiveness of these new arrangements. If these new processes work as intended, however, the service to all tax credit complainants should improve significantly, with a resulting sharp drop in the number of complaints escalating here. We see this as a major step forward and evidence of a significantly improved customer focussed culture within the TCO.

### **Other complaints about HMRC**

There has been little change regarding the other main areas for complaint. These are:

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

As noted in our 2004/2005 Annual Report, the majority of complaints concerning tax codes arise where taxpayers have underpaid tax because of an incorrect code being applied to their earnings.

In our last annual report, we noted that there had been a 13% reduction in the number of complaints that we received about the work of former Customs and Excise. This trend has continued, following the transition to HMRC, with a further reduction of 29% in complaints that we have received about areas of work that were traditionally dealt with by Customs and Excise.

## Valuation Office Agency

In our last annual report, we anticipated that, in addition to the Valuation Office Agency's (VOA's) existing workload and responsibilities, the Agency faced significant challenges in delivering three major revaluation exercises. We acknowledged that these exercises had the potential to generate complaints.

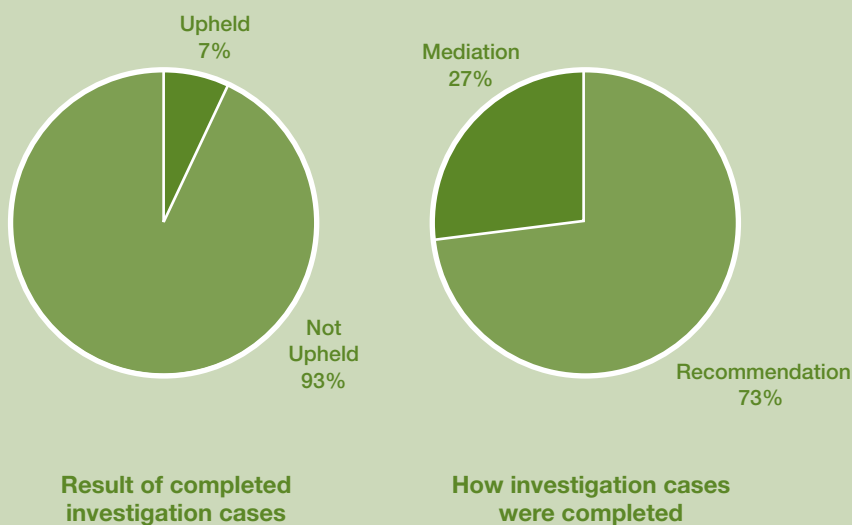
The VOA delivered a non-domestic rating revaluation and council tax revaluation in Wales on 1 April 2005. They also made significant progress in their preparation for the council tax revaluation in England, due to take effect from April 2007. Ministers, however, subsequently announced the postponement of the exercise in England.

This year, we experienced only a slight increase in the number of VOA cases that we investigated. We completed 15 investigations during the year, only one of which was upheld in part. This maintains the VOA's excellent record on complaints handling. The VOA, however, have not been complacent and we are pleased to see that Andrew Hudson, the Chief Executive, recognises the need for staff to record details of their inspections and discussions with taxpayers

and agents. This has been an issue that we have highlighted in some of the cases that we have investigated.

We still see a number of cases where the complainant is unhappy with the valuation for non-domestic business rates, or the council tax band of their property, together with valuations for taxation purposes such as Capital Gains Tax and Inheritance Tax. As an appeal route exists, however, we do not investigate the accuracy of the valuations, our role being to investigate the VOA's handling of an individual's, or company's, affairs.

### VOA investigation results



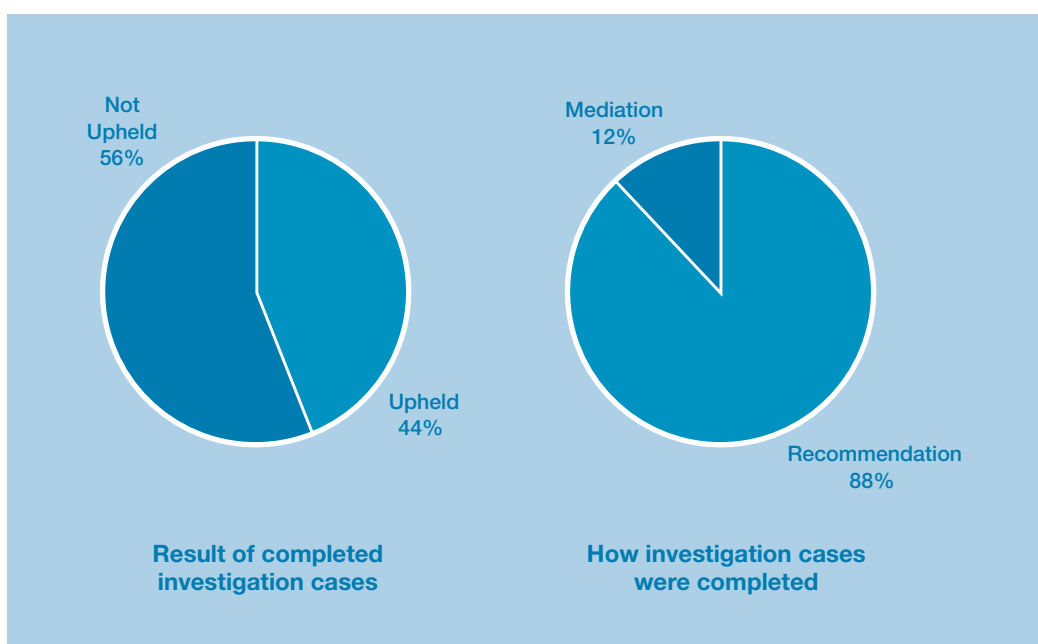
*“...the Chief Executive recognises the need for staff to record details of their inspections and discussions with taxpayers and agents.”*

## Public Guardianship Office

This year has seen a slight decrease in the number of complaints that we received about the PGO. Last year, we received 14 complaints and this year the comparable number was 12. The number of investigations that we completed has increased from 13 last year to 16 this year and the percentage of those investigations that we upheld has reduced from 54% last year, to 44% this year.

### PGO investigation results

*“One of the reasons for the improvement has been the continued development of good communications between our offices.”*



In our last annual report, we noted that there were some areas where we felt that the PGO might usefully improve their level of customer service. We are pleased that the results for this year demonstrate that the PGO has taken positive steps to address these areas. We did not wholly uphold any of the complaints that we investigated and, where we upheld cases in part, we usually found only minor handling failures.

One of the reasons for the improvement has been the continued development of good communications between our offices. We have encouraged informal discussion of cases, both at the initial stage before our investigations begin and while they are in progress. We have also introduced a formal feedback system, which enables issues that

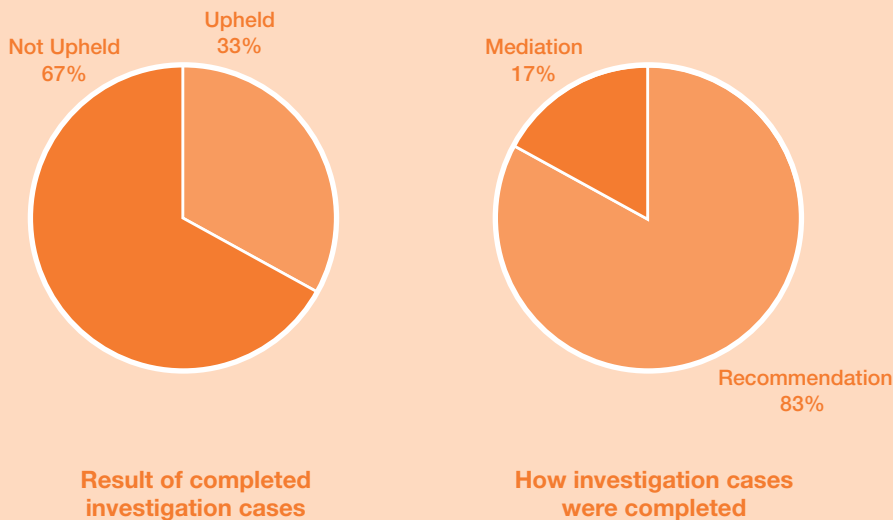
we have identified to be addressed quickly. This year, we also introduced a programme of regular meetings between members of our staff and those of the PGO. These have been mutually beneficial, particularly as there has been a recent change in the management of the PGO Complaints Handling Unit.

With the approaching implementation of the Mental Capacity Act 2005, due to come into force in April 2007, the transition from the PGO to the new Office of the Public Guardian is beginning to gather momentum. During the next 12 months, there will be an even greater need for us to work together with the PGO to help the process go smoothly. As an initial step, there has been a meeting between Dame Barbara and the Public Guardian (Designate), Richard Brook.

## The Insolvency Service

In terms of the number of complaints that we have seen about The Insolvency Service, this year has been another quiet one. We have taken on 11 new cases for investigation this year and have settled 12.

### The Insolvency Service investigation results



*“We are impressed by The Insolvency Service’s preparedness to consider our views and to implement changes to their working practices.”*

Although we have not taken on many complaints about The Insolvency Service, we have continued to have the opportunity to offer them our feedback where appropriate. We are impressed by The Insolvency Service’s preparedness to consider our views and to implement changes to their working practices, where they agree that this would lead to improvement. We think that this represents a positive and constructive attitude towards complaints and the lessons that a business can learn from them.

One such example of this has been the guidance given to Official Receivers and their staff when considering whether an application for a bankrupt’s early discharge from the proceedings should be made. The provision allowing Official Receivers to make an application to court for a bankrupt’s

early discharge from the proceedings was included in the Enterprise Act 2002, which came into force on 1 April 2004. The early discharge procedure is, therefore, a new area of work that is being undertaken by Official Receivers.

During an investigation, we found that The Insolvency Service’s guidance about the early discharge procedure was unclear and, in part, contradictory. As this had national implications, we told The Insolvency Service of our views and asked them to consider whether their guidance needed to be reviewed.

The Insolvency Service have told us that, on reflection, their original guidance was, in part, contradictory and restrictive. They have now updated their guidance to clarify the matter.

From 1 April 2006, The Insolvency Service became responsible for Companies Investigation Branch (CIB), an area of work previously under the jurisdiction of the Department of Trade and Industry. The CIB investigate complaints about the conduct of “live” limited companies and Limited Liability Partnerships, which have a business address in Great Britain and when such an investigation is in the public interest.

**Case summaries**

You will find case summaries for some of the complaints that we have investigated about HMRC and the other organisations that we work with starting at page 23 of this report.



Simon Oakes  
Head of Office



# Appendix 1

## Statistics

This year we took on for investigation 1034 complaints, an increase of 53% from 2004/2005 where the total was 674. We completed 926 investigations, compared to 581 last year, an increase of 59%.

### Outcome of all complaints

	Upheld (either wholly, or in part)	Not upheld	Withdrawn	Department Reconsidered	Total
2004/2005	259 (45%)	297 (51%)	25 (4%)	0 (0%)	581
2005/2006	399 (43%)	452 (49%)	48 (5%)	27 (3%)	926

### How complaints were handled

	Recommen- dation	Mediation	With- drawn	Department Reconsidered	Total
2004/2005	321 (55%)	235 (41%)	25 (4%)	0 (0%)	581
2005/2006	520 (56%)	331 (36%)	48 (5%)	27 (3%)	926

### Assistance cases

In 2005/2006, the Assistance Team answered 9,533 general enquiry telephone calls, compared with 14,725 in the preceding year. These covered topics such as questions about VAT returns and requests for telephone numbers of tax offices, as well as information about complaint procedures.

The reduced number of calls this year reflects our use of an enhanced switchboard system, which directs the public to contact

the organisations that we investigate directly where their enquiry is a general one rather than a complaint.

This year we took on 5,614 complaints as assistance cases compared with 4,903 last year. These are cases where the organisation has not had an opportunity to consider the complaint and we refer it back to the organisation to deal with.

## HM Revenue & Customs

We took on for investigation 997 complaints about HMRC this year, compared to 639 last year, an increase of 56%. We completed 883 investigations, compared to 542 last year, an increase of 63%.

### Outcome of HMRC complaints

	Upheld (either wholly, or in part)	Not upheld	Withdrawn	Department Reconsidered	Total
2004/2005*	243 (45%)	276 (51%)	23 (4%)	n/a	542
2005/2006	387 (44%)	421 (48%)	48 (5%)	27 (3%)	883

### How HMRC complaints were handled

	Recommen- dation	Mediation	Withdrawn	Department Reconsidered	Total
2004/2005*	296 (55%)	223 (41%)	23 (4%)	n/a	542
2005/2006	485 (55%)	323 (37%)	48 (5%)	27 (3%)	883

(\*As HMRC did not exist in 2004/2005, we have amalgamated the results for both the former Customs and Excise and Inland Revenue to provide figures for comparison)

### Compensation

We recommended HMRC pay a total of £470,608 to complainants this year, an increase of £223,760 on the previous year.

We recommended HMRC pay £54,791 compensation for costs arising directly from their mistakes or delays. We also recommended payments totalling £25,281 for worry and distress and payments amounting to £19,950 for poor complaints handling.

We recommended that HMRC give up tax, interest and overpaid tax credits amounting to £370,586.

HMRC accepted all of the Adjudicator's recommendations.

## Valuation Office Agency

We took on for investigation 14 complaints about the VOA this year, compared to 10 last year, an increase of 40%. We completed 15 investigations, compared to 12 last year, an increase of 25%.

### Outcome of VOA complaints

	Upheld (either wholly, or in part)	Not upheld	Withdrawn	Department Reconsidered	Total
2004/2005	3 (25%)	9 (75%)	n/a	n/a	12
2005/2006	1 (7%)	14 (93%)	n/a	n/a	15

### How VOA complaints were handled

	Recommen- dation	Mediation	Withdrawn	Department Reconsidered	Total
2004/2005	9 (75%)	3 (25%)	n/a	n/a	12
2005/2006	11 (73%)	4 (27%)	n/a	n/a	15

## Compensation

This year, we recommended the VOA pay a total of £75 to complainants (all of which comprised of payments for worry and distress), a decrease of £245 on the total for the previous year.

The VOA accepted all of the Adjudicator's recommendations.

## Public Guardianship Office

We took on for investigation 12 complaints about the PGO this year, compared to 14 last year, a decrease of 14%. We completed 16 investigations, compared to 13 last year, an increase of 23%.

### Outcome of PGO complaints

	Upheld (either wholly, or in part)	Not upheld	Withdrawn	Department Reconsidered	Total
2004/2005	7 (54%)	5 (38%)	1 (8%)	n/a	13
2005/2006	7 (44%)	9 (56%)	n/a	n/a	16

### How PGO complaints were handled

	Recommen- dation	Mediation	Withdrawn	Department Reconsidered	Total
2004/2005	8 (61%)	4 (31%)	1 (8%)	n/a	13
2005/2006	14 (88%)	2 (12%)	n/a	n/a	16

## Compensation

We recommended the PGO pay a total of £658 to complainants this year, a decrease of £2,732 on the previous year.

Of this, £433 was recommended as compensation for costs arising directly from their mistakes or delays. We recommended the PGO make payments for worry and distress totalling £100 and payments amounting to £125 for poor complaints handling.

The PGO accepted all of the Adjudicator's recommendations.

## The Insolvency Service

We took on for investigation 11 complaints about The Insolvency Service (the same number as last year) and completed 12, compared to 14 last year, a decrease of 14%.

### Outcome of The Insolvency Service complaints

	Upheld (either wholly, or in part)	Not upheld	Withdrawn	Department Reconsidered	Total
2004/2005	6 (43%)	7 (50%)	1 (7%)	n/a	14
2005/2006	4 (33%)	8 (67%)	n/a	n/a	12

### How The Insolvency Service complaints were handled

	Recommen- dation	Mediation	Withdrawn	Department Reconsidered	Total
2004/2005	8 (57%)	5 (36%)	1 (7%)	n/a	14
2005/2006	10 (83%)	2 (17%)	n/a	n/a	12

## Compensation

We recommended The Insolvency Service pay complainants a total of £935 in compensation this year.

Of this, £755 was recommended as compensation for costs arising directly from their mistakes or delays. We also recommended that they make payments for worry and distress totalling £180.

The Insolvency Service accepted all of the Adjudicator's recommendations

# Appendix 2

## Key Performance Measures and Targets

### Assistance work

Description	Targets	Achieved
Where a written reply is required, percentage of cases where the Assistance team response is made within 10 working days	95%	<b>96.53%</b>
Percentage of cases where a report and papers are requested from the department within 5 working days of the decision to investigate	95%	<b>98.26%</b>
Percentage of complainants satisfied with our handling of their complaint at assistance level	85%	<b>81.93%</b>

### Investigation work

Description	Targets	Achieved
Percentage of investigation cases where complainant and organisation are informed of allocation to Adjudication Officer within 5 working days	95%	<b>96.98%</b>
Percentage of investigation correspondence dealt with within 15 working days	95%	<b>97.61%</b>
Percentage of investigation cases where updates are provided to the complainant every 20 working days	95%	<b>91.14%</b>
Average investigation turnaround time (in weeks)	20 weeks	<b>19.69 weeks</b>
Percentage of investigation cases closed within 44 weeks	98%	<b>99.68%</b>
Percentage of cases settled by mediation	35%	<b>35.75%</b>
Percentage of complainants satisfied with our handling of their complaint at investigation level	70%	<b>72%</b>
Percentage of the organisations' complaint teams satisfied with the quality and value of the feedback that we provide to them about investigation cases	85%	<b>100%</b>

# Appendix 3

## Budget

	2004/2005	2005/2006
Staffing	£1,756,050	£1,881,029
Accommodation*	£470,000	N/A
Other operating costs*	£97,517	£67,401
Capital	£4,300	£3,310
<b>Total</b>	<b>£2,374,971</b>	<b>£1,951,740</b>

\*As a result of the centralisation of HMRC's finances, the 'Other operating costs' figure for 2005/2006 no longer includes our accommodation, telephone and certain other costs.



# Appendix 4

## Customer satisfaction

Our customers fall into two distinct groups:

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

### The public

We measure complainants' satisfaction by conducting telephone surveys, carried out on our behalf by the British Market Research Bureau, on completion of our investigation. The following table provides a comparison between the results recorded during the period covered by our last report and those for this year.

Question	2004/2005	2005/2006
Did the AO provide you with clear advice?	69% agreed either 'strongly' or 'slightly'	76% agreed either 'strongly' or 'slightly'
How would you rate the quality of written communication received from the AO?	81% answered within a range from 'excellent' to 'good'	82% answered within a range from 'excellent' to 'good'
How would you rate the quality of any telephone communication received from the AO?	76% answered within a range from 'excellent' to 'good'	79% answered within a range from 'excellent' to 'good'
How happy were you with the outcome of your complaint?	42% were either 'very' or 'fairly' happy	45% were either 'very' or 'fairly' happy
Would you agree or disagree that the AO fully explained their decision?	82% agreed either 'strongly' or 'slightly'	79% agreed either 'strongly' or 'slightly'
Would you agree or disagree that the AO investigated your complaint thoroughly?	69% agreed either 'strongly' or 'slightly'	66% agreed either 'strongly' or 'slightly'

Question	2004/2005	2005/2006
How well was the mediation process explained to you?	89% said that it was explained either 'very' or 'fairly' well	90% said that it was explained either 'very' or 'fairly' well
How satisfied were you overall with the service that you received from the AO?	66% were either 'very' or 'fairly' satisfied	72% were either 'very' or 'fairly' satisfied

### **The Organisations**

We conduct an annual survey aimed at managers responsible for complaints in the organisations. Unfortunately, although the response rate from the smaller organisations that we work with is always high, certain parts of HMRC did not submit a response this year. Of those areas that did respond, we are pleased to report that 100% reported that they were satisfied with the quality and value of information that we provided to them on conclusion of our investigation.

# Appendix 5

## Case summaries

### HM Revenue & Customs

This year, the main areas of HMRC's work that have prompted complaints to this office are as follows:

- The Tax Credit Office (TCO), 52% of all complaints received
- Application of Extra Statutory Concession A19 (ESC A19) and issues concerning tax codes, 13% of all complaints received
- Investigations and Enquiries into income tax related matters, 4% of all complaints received
- VAT Assurance work, 4% of all complaints received

Case summaries for complaints about these issues, as well as some for other parts of the organisation, can be found over the following pages.

It is important to remember that, when considering complaints about all of the organisations that we work with, we do so with reference to their own instructions and guidance.

We have no authority to recommend that the organisations act outside these instructions and guidance, nor can we entertain requests to provide 'natural justice' where complainants consider that these instructions are not fair.



## Tax Credit Office case summaries

### HMRC's Code of Practice 26 (COP 26)

- What happens if we have paid you too much tax credit - states that:

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

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

The majority of complaints that we have investigated about the TCO concern the application of these criteria and, in particular, whether it was "reasonable" for an individual to think that their award was correct.

The test here is not whether a tax credit claimant believed that their award was correct but, rather, whether it was reasonable for them to believe that the award was correct, based on all available information. The following case summaries illustrate the sorts of issues arising from our investigation of such complaints.

### Tax Credit Office case summaries

#### TCO summary 1

Mr A complained about mistakes and delays in his claim to tax credits.

In May 2003, Mr A initially made a joint claim for tax credits with his partner, who had previously claimed in her own right as a single parent. Despite numerous calls from Mr A to the tax credit Helpline, the claim was not put into payment until late July 2003.

In November 2003, Mr A's partner had a baby and, when Mr A telephoned the Helpline to report this, he was told that his tax credit payments would increase. Due to a technical problem, however, the computer system failed to recognise either child and payments stopped altogether. This was not resolved until the end of December 2003 but, unfortunately, there were still mistakes in the new award, which led to more being paid than should have been. In addition, the award was backdated to May 2003, which, in turn, led to the duplication of payments.

Mr A realised that he had been overpaid and rang the Helpline on four occasions, trying to find out the value of the overpayment and how he could repay it. During the first three calls, he was told that it was not possible to calculate the size of the overpayment and that he probably would not find out until the end of the tax year. On the fourth call, Mr A claimed that the advisor calculated the overpayment to be around £1,900 but, unfortunately, this calculation was incorrect. The TCO have no record of this conversation.

The TCO acknowledged that their mistakes and delays had caused Mr A considerable worry and distress. By the time we started our investigation, they had already paid him £225 for this and an additional £10 to cover his costs.

#### We wholly upheld this complaint

We felt that the TCO should consider giving up some of the overpayment. The nature of the mistakes in the December award were such that we concluded that it was reasonable for Mr A not to have noticed them. We also felt that it was reasonable for Mr A to consider that the specific figure given to him when he telephoned the Helpline was the correct overpayment figure.

The TCO reconsidered their original decision, and agreed to give up a substantial part of the overpayment. They also offered to make additional compensation payments of £150 for worry and distress, and £100 for their poor complaint handling, including their delay in submitting their report and papers to us, which held up our investigation.

### TCO summary 2

Ms B complained about the TCO's decision to recover overpaid tax credits that she received during the 2003/04 and 2004/05 years and the poor handling of her subsequent complaint.

Ms B contacted the tax credit Helpline in September 2003, informing them that her daughter had left full-time education to begin a part-time apprenticeship. The apprenticeship was one day a week at college, which meant that Ms B's entitlement to both Child Tax Credit (CTC) and Working Tax Credit (WTC) should have ended.

Unfortunately, when the TCO processed Ms B's change of circumstances, they made an administrative mistake, which resulted in her receiving a new award that showed exactly the same monetary value as her original award. The only change was a slight rescheduling of payments. This mistake meant that Ms B was overpaid tax credits in the 2003/04 and 2004/05 tax years, which, in total, amounted to over £2,000.

Ms B complained about the TCO's subsequent decision to recover the overpaid tax credits. She said that the award notice that she received following her change of circumstances referred to her having a qualifying child between the ages of 16 and 19 but did not specify that her daughter was still in full-time education. Some of Ms

B's colleagues had children, who were both studying for 'A' Levels and working part time, and they still received tax credits. When Ms B received an award notice confirming that her daughter was still eligible for tax credits, she said that she had no reason to believe that this was wrong.

In reply, the TCO said that, once a claimant has informed them of a change of circumstances, they receive a new award notice. The claimant is then responsible for making reasonable efforts to ensure that the new award is based on accurate information. In Ms B's case, the TCO concluded that, as Ms B had advised them of the change in circumstances, she could not reasonably expect the monetary value of her award to stay the same. The TCO did, however, accept that their mistake caused Ms B worry and distress and paid her £25 compensation. Ms B considered that this was an insult and complained to the Adjudicator.

While preparing their report for this office, the TCO reconsidered their initial offer of compensation, offering a further £50 for worry and distress, £50 for poor complaints handling and £10 for direct costs.

### We did not uphold this complaint

In Ms B's case, we concluded that, under the terms of COP26, it was not reasonable for her to believe that her revised award was right. We agreed with the TCO's view that, as she had advised them of a change in circumstances, she should have realised that there had been a mistake when the monetary value of her award did not change. On that basis, we could not conclude that the TCO's decision to recover the overpayment was unreasonable.

We also concluded that the additional compensation offered by TCO was reasonable and in keeping with amounts paid in comparable cases.

### Tax Credit Office case summaries

As mentioned in the Overview section of this report, we have investigated a number of complaints this year where the TCO have failed to give appropriate consideration to a complainant's concerns about hardship resulting from the recovery of an overpayment. The following summaries illustrate how important it is for the TCO to be alert to such concerns.

#### TCO summary 3

Ms C is a single parent, originally in receipt of WTC and CTC. In May 2003, during the first year of her claim, Ms C reported a significant decrease in her income. Shortly afterwards, some incorrect payments were made to Ms C due to a technical error. As Ms C had expected an increase in her tax credits, she thought that these payments were correct.

In June 2004, the TCO wrote to Ms C to tell her about the overpayment, which amounted to more than £1,000. They immediately began recovery from her 2004/2005 award, at the rate of 25%.

Ms C felt strongly that the overpayment should not be collected and wrote to give her reasons for this. She said that the recovery was causing her severe hardship and asked, at the least, for the rate of recovery to be reduced.

The TCO decided initially that the overpayment should be recovered, because they felt that Ms C should have realised that she had been overpaid. They considered, on several occasions, making top-up payments or additional tax credit payments but decided against these on the basis that Ms C was not eligible to receive them. When they wrote to her, they told her there was no right of appeal against the decision but she could go through the complaints process.

In March 2005, however, the TCO reconsidered their decision about the overpayment and agreed not to recover it. Unfortunately, by this time, Ms C had been forced to give up her job, as she could no longer afford to pay her childcare costs. Therefore, when the TCO paid her £50 compensation for worry and distress and £10 for the costs of her telephone calls, she felt unable to accept this as a resolution to her complaint, and she asked us to investigate.

#### We upheld Ms C's complaint

We found that the TCO had not followed their own internal guidance, which states that, where hardship is claimed as a result of cross-year recovery, a referral should be made to HMRC's Debt Management & Banking (DMB) for further consideration. More importantly, COP 26 gives a clear expectation that an individual's financial circumstances will be taken into account whenever hardship is an issue. The guidance goes to some length to describe what factors should be considered. We saw that Ms C's individual circumstances were not considered at all.

We asked the TCO to reconsider the amount of compensation for worry and distress that they were willing to pay. In their initial report to us, they had offered £75 for poor complaint handling and an additional £60 for worry and distress. After they had considered our views, however, they apologised for not explaining to Ms C how she could have her claims of hardship considered further, and offered an additional £50 compensation for worry and distress.

We had seen, when we investigated Ms C's complaint, that her worry and distress had been significant. She had suffered depression, for which she received

medication and counselling and this had affected her very young son. The most important aspect, in our view, was that Ms C had been forced to give up her job, which she told us she had found devastating, as she had always tried to be independent. We considered an additional payment of £300 should be made for worry and distress, taking the total payment to £350.

Ms C also told us that, because of the many visits she had made to her local tax office to discuss the overpayment and hardship issues, she had incurred costs of travel and parking. She had also incurred overdraft charges. TCO agreed to pay £59.96 to cover the costs of Ms C's mileage and agreed to consider reimbursement of bank charges upon receipt of Ms C's bank statements.

#### TCO summary 4

Ms D was overpaid tax credits by more than £4,700 during the 2003/04 tax year and a further £500 during the 2004/05 tax year. This overpayment resulted partly from Ms D completing her claim form incorrectly. Once this was discovered, in October 2003, Ms D's tax credits stopped, as she had already received her full entitlement for the 2003/04 year. The overpayment was further increased as a result of a rise in her income during the year (she did not advise the TCO of the increase until her award was finalised).

When her payments stopped in October 2003, Ms D complained that this was causing her family hardship. As a consequence, the TCO agreed to pay Ms D additional tax credit payments (ATCPs). However, these payments were soon reduced and stopped without explanation. ATCPs were not awarded in the following tax year (2004/05).

Ms D complained to the TCO that she should

not have to pay the overpayment back. She said that she had thought that her award was correct. She further complained that she repeatedly told the TCO that the recovery of the overpayment was causing her and her family hardship but she felt that this had been ignored.

The TCO reviewed the recovery of the overpayment on two occasions and decided that it was fully recoverable under COP26. They said that the overpayment had not come about because of a mistake on their part and that it was not reasonable for Ms D to believe that her award was correct. They did accept that Ms D had been caused worry and distress by what had happened and had already paid compensation of £150 in recognition of this, together with £10 costs. At the time that Ms D asked this office to investigate her complaint, the TCO were recovering her overpayment at a rate of 25% of her award.

#### We partially upheld this complaint

We concluded that the TCO's decision to recover the overpayment was reasonable and consistent with COP 26, as it had not arisen because of a mistake on their part. However, we were concerned that the TCO had failed to consider that Ms D and her family were suffering hardship as a result of the recovery of the overpayment. We noted that, in nearly every letter Ms D had sent to the TCO, she had said that she was finding it difficult to cope financially and to meet her day to day living expenses. We concluded that the TCO had handled poorly certain aspects of her complaint:

- They did not award ATCPs during the 2004/05 tax year, despite writing to Ms D inviting her to contact them if she felt that she was in hardship. She did write to them, saying that the recovery



### Tax Credit Office case summaries

of the overpayment was causing her financial problems but the TCO did not reply to this letter

- At another stage of the complaint, Ms D's case was passed to the TCO team that deals with hardship but nothing came of this referral (we presumed that it had been lost)
- They should have referred Ms D's case to DMB, so that they could consider hardship but they had not done this

We discussed these issues with the TCO and they accepted that they had failed to consider hardship adequately. They agreed to refer Ms D's case to DMB, who contacted Ms D and discussed her circumstances with her. As a result of this discussion, they agreed to reduce the rate of recovery of the overpayment from 25% to 10%.

We also agreed with the TCO that they should pay Ms D £100 in recognition of the worry and distress they had caused by their failure to consider hardship. They also paid her £50 in recognition of their poor complaints handling. Ms D agreed to settle her complaint on this basis.

### Contact Centres and Helplines case summaries

HMRC Contact Centres and Helplines are the first point of contact for calls made to HMRC. Their aim is to provide a professional service to all callers, with staff able to provide help and assistance on aspects of their work, including Taxes, National Insurance, Child Benefit, Tax Credit and Customs/VAT matters.

Contact Centres record many of their calls for training and quality control purposes and we often retrieve these calls during our investigations. A recording will usually enable us to resolve most complaints, which typically involve allegations concerning staff attitude, or misleading advice, swiftly and conclusively.

The following case summaries illustrate both of the main types of complaint that we receive about Contact Centre/Helpline work. The first relates to the general service provided by the tax credit Helpline and, in particular, allegations regarding a Helpline adviser's attitude. The second summary relates to alleged misleading advice.

#### Contact Centre summary 1

Mr E rang the tax credit Helpline in January 2005, following receipt of a letter concerning the renewal of his tax credits claim. He had called the Helpline a number of times in the previous year for advice on a wide variety of matters.



### Contact Centres and Helplines case summaries

In his complaint to this office, Mr E said that he was unhappy about the service provided by the Helpline, describing it as “useless”. He also alleged that Helpline staff treated the public unprofessionally. With regard to the call he made to the Helpline in January 2005, he complained that he was “fobbed off” and that the operator did not listen to him. He also stated that, whenever he had called the Helpline in the past, staff had been off-hand and rude, had not listened to him and had simply wanted to finish the call at the earliest opportunity.

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

We reviewed all of the correspondence in connection with the case and were also able to obtain recordings of three telephone calls that Mr E made to the Tax Credit Helpline between March 2004 and January 2005, including the specific call that prompted his complaint.

We found that the telephone call in January 2005 was very brief, lasting just over two minutes. Mr E told the adviser that he had received a letter about renewing his tax credit claim and said that he did not know that he had to claim every year. In response, the adviser gave an explanation about letters that the TCO sends out about renewing and finalising claims. Mr E then stated that he would be on tax credit for a long time, until he received his pension. The adviser then gave a further explanation about the letter he had received but the phone cut off in mid sentence.

In our view, the adviser did not “fob off” Mr E during this call and she dealt with the query in a polite and professional manner.

We listened to two other calls that Mr E made to the tax credit Helpline. In March 2004, he called about getting extra help

with some household repairs and, in July 2004, he called about his CTC payments stopping.

In our view, the advisers who dealt with these two calls were courteous, helpful and professional in assisting Mr E with his queries. We did not hear any evidence of staff being off-hand or rude to Mr E during any of the three calls, or any evidence that they were unhelpful.

#### **Contact Centre summary 2**

Mrs F complained about poor advice given by the tax credit Helpline. Mrs F separated from her husband in October 2003 and he cancelled their joint claim the following month. Mrs F telephoned the Helpline in December 2003, after her tax credit payments had stopped but she alleged that she was not told at this time to make a single claim.

She called again in July 2004 when she reduced her working hours to see if she was entitled to tax credits. She was then told that she should have been advised, in December 2003, to make a single claim. Mrs F was first told that her new single claim could only be back-dated three months and then she was told that it could be back-dated to November 2003. Mrs F complained to the Adjudicator because she felt that she had been misadvised and, as a result, had lost out financially.

#### **We upheld this complaint**

Mrs F did have a telephone bill, which confirmed that she had called the Helpline on the day that she said she had. Unfortunately, the Helpline said that they had no trace of the initial telephone call made in December 2003 and, therefore, could not be clear about what happened during the call. The Helpline accepted,

### Contact Centres and Helplines case summaries

however, that Mrs F had not received the standard of service that she should have and that they had later given her misleading advice. After a meeting with staff from the Adjudicator's Office, the Helpline agreed to pay Mrs F compensation of £450, which she accepted as a resolution to her complaint.

### Extra Statutory Concession A19 case summaries

We have again received a large number of complaints about HMRC's handling of taxpayers' tax codes and we continue to see many cases involving unexpected tax liabilities resulting from problems with these.

Sometimes, these problems stem from HMRC's failure to amend tax codes on receipt of information, or from employers using an incorrect tax code. In some cases, however, the unexpected liability is the result of errors by the taxpayer or those acting on their behalf.

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

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

- was notified of their tax arrears more than 12 months after the end of the

tax year in which HMRC received the information showing that more tax was due.

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

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

The concession can only apply, however, where the taxpayer could reasonably have believed that their tax affairs were in order. This difficult test is often the deciding factor in determining whether or not HMRC have applied their discretion fairly and properly.

It is important to remember that the test is not a question of whether a taxpayer believed that their affairs were in order but whether it was reasonable for them to hold this belief when all relevant factors are taken into consideration. As an illustration of this, if a taxpayer's circumstances change, for example when they start to receive a secondary source of income, it would not usually be reasonable for them to expect to pay the same rate of tax that they paid on a single source of income.

In considering such complaints, we have to apply the test strictly in the same way that HMRC should when using their discretion to decide whether the concession should be given.

This year, we investigated a number of complaints from retired taxpayers with more than one source of income. Problems

have arisen when HMRC have not set up appropriate arrangements for each source to be taxed correctly.

The following case summaries illustrate the importance of checking tax codes to ensure that they are correct.

### ESC A19 Case summaries

#### ESC A19 summary 1

Mr G wished to increase his income and was offered the opportunity to work abroad for a calendar year - June 2002 - June 2003. He completed a form P85 and HMRC issued a notice of coding showing that a 'nil tax' (NT) code should be applied to his earnings abroad. This was incorrect, as Mr G would be abroad for less than an entire tax year.

On Mr G's return to the UK, HMRC issued a new tax code. When he subsequently completed his 2002/03 Self Assessment tax return, HMRC realised that the NT code was inappropriate, resulting in a significant underpayment of tax. They issued a tax calculation and, when the tax was not paid by 31 January 2004, imposed a surcharge and interest.

Mr G subsequently made a successful appeal against the imposition of the surcharge. HMRC's Interest Review Unit also looked at the case and agreed to waive a small sum of interest in respect of the delay in replying to Mr G's letter of complaint. HMRC also offered a payment of £150 for the worry and distress that Mr G suffered as a result of their mistake but he refused to accept this and complained to the Adjudicator.

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

**We looked at the case in the context of ESC A19. We had sympathy for Mr G and could see that a simple mistake by HMRC**

**in notifying the NT code had serious repercussions for him. HMRC, however, notified Mr G of the arrears within 12 months of the end of the tax year in which they received information and there was no evidence that they failed, more than once, to make use of that information.**

**We could not, therefore, conclude that HMRC had been unreasonable in saying that they could not waive the tax. We also felt that HMRC's offer of compensation was not unreasonable.**

We receive many complaints from retired taxpayers who, after retirement, have more than one source of income for the first time. Often in these cases, arrears of tax have built up because HMRC did not set up appropriate arrangements for each source to be taxed correctly. In our experience, the complaints system rarely provides more than partial redress for the taxpayer.

Prevention is always far better than cure, so we think it particularly important that HMRC's coding leaflets should draw the attention of taxpayers approaching retirement, or recently retired, to the requirement for them to check that each source of income is being taxed properly. We have invited HMRC to consider this, and are awaiting their response.

#### ESC A19 summary 2

After Mr H retired from work, he received an industrial pension. He was later re-employed and he also received a state pension and so had three sources of taxable income.

HMRC made mistakes in setting up arrangements for these sources of income to be taxed and, as a result, Mr H underpaid tax for nearly six years. He was then faced with substantial tax arrears to pay off, on top of

### ESC A19 case summaries

his normal tax liability, from a relatively small income.

HMRC acknowledged that they had made mistakes and offered Mr H appropriate redress. They agreed to collect his arrears over the next three tax years and paid him £135 in recognition of the worry and distress they had caused him and the additional costs he had incurred. Mr H thought that HMRC should give up his arrears of tax, and brought his complaint to the Adjudicator.

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

HMRC refused to apply ESC A19 in Mr H's case because he had received tax coding notifications and, with them, HMRC's explanatory leaflet. He had also received end of year summaries showing his tax codings and the tax that he had paid.

We concluded that all of this information should have alerted Mr H to the fact that he was not paying enough tax. Our role, in reviewing HMRC's decision not to give up the tax due, was to see that they had made it on reasonable grounds. We did not find the grounds unreasonable and so did not uphold the complaint.

### Tax Investigations and Enquiries case summaries

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

#### **Enquiry summary**

Mr I's agent, acting on his behalf, complained to the Adjudicator's Office about the way that HMRC had handled his client's affairs. He said that his client was unhappy about:

- The length of an enquiry, which concluded with it being established that there were no additions to profits.
- The accumulation of professional fees. The agent said that these were inflated by the HMRC Inspector's delays in answering his correspondence.
- The Inspector stating that Mr I was unwilling to meet with her, when this was not the case.
- The Inspector allegedly having written to the accountant, calling his professional integrity into question.
- The compensation already paid to him by HMRC. This amounted to £25 in recognition of mistakes that were made in the handling of his complaint. Mr I considered that this was wholly inadequate.

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

We found that, although there had been some delays, mainly at a time when the Inspector was on sick leave, HMRC had already recognised and apologised for these. We could not see that these delays

## Enquiry summary

had given rise to any significant additional professional fees. Furthermore, it was noted that the agent had not found it necessary to contact the Inspector during these delays in order to find out what was happening.

It was accepted that some confusion did arise concerning whether Mr I was prepared to meet with the Inspector. We concluded, however, that this was primarily the result of a letter from the agent. This was considered to be ambiguous and capable of interpretation in more than one way.

Careful attention was given to the claims that the Inspector had slighted both the personal honesty of the accountant and the professional integrity of his practice. We concluded, however, that no aspersions, of any nature, had been cast on the accountant.

The reasons why the Inspector had considered it necessary to clarify some of the things that the agent had written were considered. Given previous misunderstandings, they were not felt to be unreasonable. Furthermore, a later paragraph in the offending letter appeared to put all of the Inspector's comments into context.

It was not felt that there was any basis for reimbursing, either in full or in part, any of the accountant's fees. Nor was it considered appropriate to ask HMRC to pay any further compensation.

## Investigation summary

Mr J complained about delays by HMRC's Special Compliance Office (SCO) associated with their initial criminal investigation and subsequent decision to transfer the papers to the Civil Investigation team.

SCO had accepted that there was a delay in progressing matters towards the civil investigation but Mr J said that there had also been a delay in notifying him that the criminal investigation had been stopped. He also complained about the way in which his subsequent complaint was handled.

## We upheld this complaint.

We found that there had been a delay from August 2001 until July 2002 in notifying Mr J that the criminal investigation had ceased. SCO had already offered to pay Mr J £500 in recognition of the worry and distress caused by their delay in transferring the case to the civil investigation team. They agreed to pay a further £500 for the delay in telling him that they would not continue with the criminal proceedings. They also offered to pay costs of £2,000.

We also found that Mr J's complaint was not handled well. SCO had not recognised that there were two periods of delay and there had been confusion over which delay the original £500 referred.

As Mr J had engaged a solicitor to take his complaint forward, SCO agreed to make a contribution of £1,350 towards his solicitor's fees. They also agreed to pay Mr J an ex-gratia payment to cover the interest that was charged for the period covered by their delays. We calculated this to be nearly £3000.



### Child Benefit Office case summary

This year we have again received a small number of complaints about the Child Benefit Office (CBO). Some of the complaints we received concerned the CBO's discretionary decision-making process for cases where there are two "rival" child benefit claims for the same children. This typically happens when parents have separated, or divorced, but share responsibility for the care of a child.

In such cases, the CBO must make a decision as to which parent will receive the child benefit. This process can be extremely difficult and stressful for parents and will, perhaps inevitably, result in one of the parties being dissatisfied.

#### Child Benefit Office case summary

#### Child Benefit Office summary

Mr K complained about the HMRC Commissioners' exercise of discretion in relation to a rival claim for child benefit.

Mr K was in receipt of child benefit for both of his children until June 2004. At that point, the children's mother, Ms K, also made a claim. When this happens and agreement cannot be reached between the parties, the Commissioners for HMRC have to make a decision as to who should be awarded the benefit. After making enquiries of both parties, conflicting information was given about many aspects of the children's care but it seemed there was no dispute that the children resided with Mr K on four nights a week and with Ms K on three nights a week.

The Commissioners made a decision, against which there is no appeal, on the basis of the information available, to grant the benefit for the older child to Ms K and for the younger child to Mr K.

Since the original decision was made, Mr K

had been in regular contact with the CBO, to express his dissatisfaction at the outcome. As a result, the decision was looked at three times as part of the complaint but remained the same. Mr K subsequently complained to the Adjudicator.

#### We did not uphold this complaint

When we investigated Mr K's complaint, we did not consider that the Commissioners' decisions had been unreasonable but we were concerned that it had taken a long time before an independent party looked at things on Mr K's behalf. From his letters, it is clear that he was challenging the basis on which the decisions were reached.

It seemed to us that the CBO may not have been fully aware of the role of the Adjudicator's Office in considering discretionary decisions. We asked the Director of the CBO to consider adapting their complaint handling procedures accordingly.

### Value Added Tax (VAT) case summaries

As in previous years, the majority of complaints that we receive about VAT concern allegations of misdirection, or misleading advice from HMRC Officers.

The following case summaries are typical of the complaints that we investigate about such issues.

#### VAT summary 1

Messrs L, M and N trade in partnership providing, among other things, lessons in a subject ordinarily taught in a school or university. The provision of such services is VAT exempt, provided that the partners give the tuition themselves but, in this case, the partners engaged a self-employed teacher to



**VAT case summaries**

give the lessons.

The partners had learned from a trade journal that their tuition might be exempt from VAT. They firstly obtained HMRC's leaflet on the subject and then wrote to them for confirmation that they qualified for the exemption. They told HMRC that they were a partnership but did not specify who delivered the tuition.

HMRC confirmed that the partnership was eligible for the exemption and invited them to make a voluntary disclosure of the VAT overpaid in the last three years, provided that they could show that repayment of the VAT would not unjustly enrich them. The partners were able to do this and made a claim, which HMRC paid. In the course of their correspondence with HMRC, the partners had by now told them that a third party provided the lessons.

A VAT assurance officer later visited the partnership and found that the partners should have been accounting for VAT on the tuition they had provided because they did not provide the lessons personally. HMRC issued an assessment for VAT underpaid since the time that their previous ruling was given.

The partners then claimed that they should not have to pay the VAT assessed because HMRC had misdirected them in this regard. HMRC refused this claim because the amount they had refunded to the partners earlier was greater than the amount they now assessed as due. In their view, this meant that there was no overall detriment to the partners, so their extra statutory concession allowing remission of VAT underpaid did not apply.

**We upheld this complaint**

We were not convinced that this was a correct interpretation of detriment in the context of the extra statutory concession and asked HMRC for a further view from their policy advisers.

Their advice was that the original mistaken repayment made to the partners should not be taken into account. The repayment was made some years ago and would not now be available to pay the assessment. It was clear that the charge for the lessons was as much as the market could bear and that the price of tuition had not changed whether VAT was charged or not. It was not feasible for the partners to recover from their clients, after the event, the VAT that had been underpaid, so having to pay the assessment would represent a substantial detriment.

We mediated settlement of the complaint on the basis that HMRC would withdraw their assessment and make a payment of £100 in recognition of their poor complaint handling.

**VAT summary 2**

Company O was a new business set up to take over and run an existing business.

After the business had been running for some months, the company applied to register for VAT. Through a misunderstanding of the rules, the company asked for the effective date of registration to be the date that they set up the business, rather than a much later date defined by when their business exceeded the VAT registration threshold. The effect of this was that they made themselves liable to account for VAT on sales, which took place before VAT had been factored into their pricing.

## VAT case summaries

Before the company made their first VAT return, they employed an accountant, who applied to the VAT Registration Unit for the effective date of registration to be amended to when the company exceeded the VAT registration threshold. The VAT Registration Unit refused on the grounds that the law did not allow for such a change. The company then appealed to the VAT and Duties Tribunal but the Tribunal, though expressing considerable sympathy, found that the decision was correct in law and dismissed the appeal.

Through their representative, the company then asked HMRC to allow the later registration date as an exercise of their discretion but HMRC said that they were unable to do so. The company then brought their case to the Adjudicator.

Although the Adjudicator cannot consider complaints that concern a matter of law or policy the company had, effectively, asked HMRC to grant an extra statutory concession. HMRC's refusal to grant this was within the Adjudicator's remit to consider.

**We did not uphold this complaint** Though maintaining that they could not change the registration date, in preparing their report to the Adjudicator, HMRC considered whether there were any grounds for waiving the VAT due as an individual extra statutory concession. They concluded that, although the difficult situation in which the company found itself was the result of their own mistake, having to pay VAT for which they had not provided was an oppressive burden. They decided, exceptionally that, in view of these two factors and delays in the reconsideration process, half the VAT and interest that the company had incurred should be written off.

**We invited the company to provide evidence that they had made no provision for the VAT. We then put the evidence that they produced to HMRC, who accepted it. We mediated settlement of the case to the satisfaction of the company on the basis of the 50% remission that HMRC had granted.**

*This complaint concerned the VAT liability in relation to the supply of tickets for sporting and cultural events.*

*If a trader supplies the tickets as part of a package, for example together with accommodation or transport, they only have to account for VAT on their margin (ie the difference between the amount charged to the customer and the amount paid to the supplier). This is the effect of a scheme operated by HMRC for tour operators and other similar organisations. The scheme does not, however, apply to ticket-only sales. If the trader supplies the tickets on their own, VAT must be accounted for on their full value.*

### VAT summary 3

P Ltd arranged hospitality and other events for their clients. Amongst other services, they made ticket-only sales. They wanted advice about VAT liability, in relation to this and other supplies and asked HMRC for an educational visit. They said that, during the visit, they were advised that they should not charge VAT on their ticket-only sales. When HMRC subsequently asked them to account for VAT on the full value of the ticket-only sales, they said that the VAT in question should be remitted, in accordance with the extra statutory concessions on misunderstanding and misdirection. They complained to us about HMRC's refusal to apply the concessions and remit the VAT.

**We upheld this complaint**  
**We agreed with HMRC that the**

misunderstanding concession did not apply. Their scheme for tour operators and others made it clear that ticket-only sales were outside the scope of the scheme and, therefore, liable to VAT on their full value. It followed that the relevant aspect of tax was clearly covered in published guidance.

P Ltd argued that the position was unclear, since officers dealing with the case had not been aware of the correct position. We concluded, however, that the knowledge or ignorance of the officers was not directly relevant for the purpose of the concession. The key issue was whether the published guidance was clear.

No contemporaneous record was made of the educational visit. P Ltd said they were advised not to charge VAT on their ticket-only sales but we found no evidence to support this. The officer concerned could not recall the visit but he said that he would have advised them to account for VAT on the margin but not on the full value of the tickets.

We were unable to reach a firm conclusion about the advice given at the visit. We were not able to identify incorrect advice that was given and followed. In these circumstances, we did not think that HMRC were acting unreasonably when they decided that the misdirection concession did not apply.

It was clear, however, that some advice about ticket-only sales was given at the visit and the advice that was given was incorrect. We considered that this amounted to a mistake on the part of HMRC and we therefore upheld the complaint.

We recommended that HMRC should take no further action to recover the VAT in question. We also recommended that they should reimburse the reasonable costs incurred by P Ltd.



## Detection case summaries

It remains the case that, for obvious reasons, we see very few complaints that concern the seizure by HMRC Customs officers of Class A drugs, firearms or pornographic material at ports and airports.

While we continue to receive complaints about the seizure of cigarettes and alcohol from people entering the UK from abroad, there are limits to what we can recommend in our investigations. Legal routes exist to challenge the validity of such seizures and to consider whether it is reasonable to return the goods in question.

Our investigations will, typically, be restricted to considering the behaviour of the Officers involved in the seizure and whether they have followed their guidance and procedures correctly.

several of their files. Mr Q's complaints were wide-ranging and we were very critical of HMRC's handling of them. Two aspects of the complaint are worth particular mention.

Mr Q told us that he had both appealed against the seizure and made a formal request for his goods to be restored. Although HMRC reviewed the seizure as a result of Mr Q's request for restoration of the goods, they maintained that they had not received an appeal against seizure. They told Mr Q that, because they had restored his goods, this had the same effect as a successful appeal against seizure. Mr Q, however, felt strongly that he had been denied an opportunity for a court to declare that the seizure was unreasonable.

### We upheld this complaint

From the paperwork that Mr Q still held, we were able to show HMRC that he had made a valid appeal against the seizure, which they had ignored. Even though their mistake had no practical consequence, we thought it important for HMRC to acknowledge it, so we asked them to write to Mr Q and apologise.

During Mr Q's interception, an officer had contacted the venue where the wedding was being held to confirm that it was going to take place. HMRC's enquiry became known within his community and Mr Q felt that this had severely damaged his reputation. He wanted HMRC to compensate him for this.

At that time, HMRC did not have a policy on officers seeking third party confirmation of the use to which imported excise goods were to be put. They did not accept that it had been a mistake for their officer to make enquiries, although they agreed that, based on the facts of the case, it had been

## Detection case summaries

### Detection summary 1

Mr Q travelled to the continent to buy a considerable amount of beer, wines and spirits for his daughter's wedding. On his return to the UK, Customs officers from HMRC intercepted him. They did not believe that the goods were for his own use and seized them as an illegal commercial importation.

After the wedding, Mr Q offered further evidence about the intended use of the seized goods and, following a formal review of the seizure, HMRC agreed to restore them.

The events in this case took place in the wake of HMRC's decision to target cross-channel smuggling of excise goods. Their policy gave rise to a very large number of complaints that, in the early days, they struggled to keep pace with. There were numerous mistakes and delays in their handling of Mr Q's case and HMRC lost

unnecessary and insensitive to do so.

We could see that HMRC had not made a mistake in making third party enquiries, because it was not contrary to their policy at the time. We were, however, concerned by the contact because, even though HMRC received confirmation of the wedding, it made no difference to their decision to seize the goods.

We are pleased to see that HMRC now recognise the sensitivity of such matters and have since issued appropriate guidance to their staff. In his complaint to us, Mr Q emphasised the harm to his reputation and told us that he felt he should be compensated for this. Within HMRC's Code of Practice on complaints, we were not able to consider whether there were grounds on which Mr Q could sue HMRC for damages because that is a matter for the courts. The complaints system is confined to offering reimbursement for additional costs or actual losses incurred because of mistakes and offering small payments to acknowledge the effects of worry and distress.

When HMRC sent us their report, they offered to pay Mr Q £250 to acknowledge the worry and distress caused by their mistakes. After discussion with us, they increased the amount to £750. Mr Q did not feel able to accept this, so the Adjudicator wrote to him to confirm that she believed that their offer was reasonable.

We thought that a significant factor in the decision to seize Mr Q's goods had been a lack of knowledge on HMRC's part about his cultural tradition. We were pleased to learn that they are shortly going to launch an internal national diversity awareness campaign and that they intend to use the

lessons learned from this complaint as part of that campaign.

### Detection summary 2

Mr R and his companion, Mr S, had arrived back to the UK from a trip abroad. Customs officers stopped and questioned Messrs R and S and searched their baggage. During the search, items of jewellery were found, which were considered to be in excess of their other goods allowance. Both were charged VAT and duty.

Mr R told us that the Customs officers harassed them and that a bag went missing, which contained items of jewellery, a watch, cigarettes and perfume. He reported this as a theft to the police approximately two hours after leaving the Customs area.

HMRC told us that, during the interception, both Mr R and Mr S were uncooperative and aggressive. Mr R complained that he and his companion were only stopped due to being young Asians but HMRC pointed to the undeclared goods as justification for the interception.

### We did not uphold this complaint

We found no evidence to suggest that the officers' interception of Mr R and Mr S had been inappropriately motivated, or that they had harassed Messrs R and S. Although it was clear that Messrs R and S had attempted to import items of jewellery without payment of duty and VAT, we were satisfied that HMRC had treated their complaints seriously and properly. We found no fault with HMRC's decision and so could not uphold the complaints.



## National Insurance Contributions Office case summary

This year, we completed 47 investigations about the National Insurance Contributions Office (the Office), compared with 27 last year. In spite of this increase, the percentage of those cases that we upheld, either wholly or in part, fell from 37% last year to 23% this year. The quality of complaint handling from the Office remains good, as reflected in the number of cases that we uphold.

An issue that continues to prompt complaints concerns the choice that married women had in respect of the rate of National Insurance (NI) that they paid. Until 1977, married women could opt to pay a reduced rate of NI - known as Married Women's Reduced Rate (MWRR) contributions. A consequence of this choice was that the woman could not then receive a state pension in her own right. Instead, her entitlement would be calculated on the basis of her husband's NI record when he reached retirement.

We receive complaints from women, who opted to pay MWRR NI contributions over 30 years ago and are surprised to find that their state pension is less than they expected. Typically, in such complaints, the woman considers that she was misled when she made her choice.

The fact remains, however, that many of the women who elected formally to pay MWRR NI contributions would have signed a form indicating their choice. This was attached to a leaflet that explained the implications clearly. This, coupled with the fact that events took place over 30 years ago, makes it all but impossible to uphold such complaints on the basis of misdirection.

The following case summary details a typical complaint about this issue.

### National Insurance Contributions Office case summary

Mr T complained on behalf of his wife about the advice that they were given about her choice to make a MWRR election. Mrs T had been very disappointed to learn that her pension entitlement would only be a few pence a week, based on the graduated contributions that she had made prior to her marriage. Mrs T will receive a pension based on her husband's contributions when he reaches pension age.

Mr and Mrs T both agreed that Mrs T had either not paid, or paid reduced rate contributions since her marriage in 1965 and had made a formal choice to do so. They complained, however, that:

- They had been given misleading advice and were misdirected. Mr T explained that he had contacted the Department in the late 1960s when he and his wife became self employed and had been told that Mrs T would be 'covered' by his contributions. Mr T said that he also contacted the Department in the 1980s and complained that, although he was told his wife would not be able to claim certain benefits, such as Unemployment Benefit, no mention was made about his wife not receiving a pension in her own right.
- That Mrs T's records were incorrect, as she could not have made an election on the date shown in her NI records, as this was their wedding day.
- Mrs T changed employers and, because she did not provide a certificate confirming her right to pay reduced rate contributions, her employer correctly

deducted standard rate contributions for a period. These were refunded but Mr and Mrs T disputed any refund had been made and said that Mrs T had not confirmed that she wanted to continue to pay MWRR contributions.

#### **We did not uphold the complaint**

We found that there was insufficient evidence to form a view about whether the information Mr T received was misleading. There was no evidence to confirm the basis of discussions between Mr T and members of the Department after some 40 years, so we could not form a reliable view about what was said and what questions were asked.

We explained to Mr and Mrs T that the Department had discretion to allow an election to take effect from a date agreed with the woman and, in practice, this was often backdated to the date of her marriage, even though the election may have been made later.

We checked Mrs T's records and the number of full and reduced rate contributions paid aligned with her date of marriage. We concluded that this evidence supported the date of election shown in her records.

Mr and Mrs T said that they had not received a refund of £25 some 11 years ago when Mrs T had paid full rate contributions but had a valid election to pay at reduced rate. The papers we saw supported that a refund had been made and, as Mrs T had resumed paying contributions at the reduced rate and continued to do so until she retired, we believed that she renewed her election when she accepted the refund.

## **Stamp Office case summaries**

A significant trend this year has been an increase in the number of complaints that we have received about HMRC's Stamp Office.

The Stamp Office is responsible for ensuring that the correct amount of Stamp Duty Land Tax is paid to HMRC following a land transaction.

### **Stamp Office summary 1**

On completion of her property purchase, Miss U's conveyancer sent HMRC's Stamp Office their client's Stamp Duty Land Tax form (SDLT1), which is used by the conveyancer to notify HMRC of the transaction and a payment of Stamp Duty, amounting to £1,330.00. This action was taken well within the permitted 28 days from purchase.

Unfortunately, despite complying with her statutory obligations, the Stamp Office issued Miss U with a Penalty Notice, which they subsequently accepted was issued in error. The Stamp Office, however, declined to apologise for the error, or to reimburse Miss U with the additional costs that she incurred as a direct result of the unnecessary correspondence that took place between her conveyancer and the Stamp Office. Miss U's conveyancer complained about this to the Adjudicator on his client's behalf.

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

We saw that, although the majority of the SDLT1 was completed correctly and in line with Stamp Office guidance, manual amendments were made to the form, by the conveyancer, resulting in the Stamp Office issuing a Penalty Notice.

The Stamp Office asks that conveyancers complete form SDLT1 online, resulting in

## Stamp Office case summaries

information placed on the form being stored in the barcode at the bottom of the form.

Any manual amendments to the SDLT1 will not be transferred to the barcode and, therefore, not registered by the Stamp Office when the barcode is scanned. We saw that the Stamp Office explained to conveyancers how to complete the SDLT1 and specifically warned against making manual additions, or alterations, to the form.

In our opinion, the reason why the Stamp Office could not process the SDLT1 form correctly was because manual additions were made to the form, against that Office's specific guidance. We did not conclude that the Stamp Office had failed to operate within their own guidelines, or that they made a mistake in issuing the Penalty Notice, or that it was unreasonable for them to withhold an apology, or reimburse any of Miss U's direct costs.

### Stamp Office summary 2

Mr V and Miss W's solicitor complained about the Stamp Office's delay in issuing his clients with the SDLT certificate. He claimed that the delay resulted directly from the Stamp Office's use of defective optical character scanning equipment, used to 'read' information submitted on forms electronically. The solicitor believed that his client's original SDLT1 form was rejected unnecessarily and that the Stamp Office should not have contacted his clients directly to obtain information to correct the errors. He claimed that the Stamp Office's delays and mishandling caused his clients considerable worry and distress and undermined his professional relationship with them.

The Stamp Office did not accept that they had made any mistakes in their handling of his clients' affairs, so Mr V and Miss W's

solicitor complained to the Adjudicator.

### We did not uphold this complaint

It is not within the remit of this office to consider complaints about matters that involve departmental policy. This includes the way in which the Stamp Office chooses to run their business and the technology employed to support it. We were, therefore, unable to consider the aspects of the complaint concerning the Stamp Office's decision to use optical scanning equipment.

We were also unable to conclude that, when the Stamp Office contacted Mr V and Miss W direct, they had not acted within their own internal guidelines although we understand that, following discussion with the Law Society, these guidelines have been amended.

Mr V and Miss W's solicitor reluctantly accepted the limitations of our remit and we mediated this complaint.



## Valuation Office Agency

This year, we have investigated a number of cases where the VOA failed to increase the council tax band of a property in a timely manner, resulting in a large backdated demand from the local billing authority. The following case summary illustrates the sorts of issues that arise in complaints of this kind.

### VOA case summary

In 1999, Mr A purchased a property that was previously used for business purposes and started to use it as his family home. The VOA deleted the rating assessment on the property but failed to amend the council tax band to reflect the fact that the property was now entirely domestic. In the event, this was not done for six years, resulting in a backdated demand for £7,500 underpaid council tax.

Mr A complained to the VOA, requesting either an amendment to the entry in the council tax list to reflect the delays, or the payment of a substantial amount towards the settling of his council tax arrears.

The VOA accepted that the delay was their fault and, in accordance with their Code of Practice "Putting things right", they offered to assist with the administration costs of a loan to clear the debt. They said that they were not, however, responsible for paying the loan itself. The VOA also offered a payment of £300 to recognise the worry and distress caused by their poor handling of Mr A's case, together with £10 to cover his direct costs. Mr A refused to accept these amounts and complained to the Adjudicator.

### We did not uphold this complaint

We acknowledged that there had been substantial delays, resulting in considerable worry and distress for Mr A when he received the backdated demand. We felt that, in the circumstances, the compensation paid by the VOA in recognition of this was appropriate.

We also concluded, however, that the further liability did not come about because of a mistake made by the VOA. It was, instead, the result of the change in use of the property. Mr A was always personally liable to pay the correct amount of council tax for the property. In moving from a business to a domestic usage, the increase in the amount of council tax payable was inevitable.



## Public Guardianship Office

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

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

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

Following the Mental Capacity Act 2005, it was announced that the PGO will cease to exist in April 2007 and will be replaced by the Office of the Public Guardian (OPG). We will continue to work with the new organisation to bring value to their complaint handling process.

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

### PGO summary 1

Ms A's mother has been under the jurisdiction of the Court of Protection since 1995. She had initially applied to be appointed as her mother's Receiver but there were objections by her siblings and her mother. Considering the acrimonious relations within the family, the Court concluded that the appointment of an independent Receiver would be preferable and appointed a local solicitor, Mr B. The order was formally issued under the seal of the Court on 9 January 1997.

Ms A made various complaints. Not all of them fell within our remit as they concerned matters that had been referred to the Court, or were about the former Public Trust Office. Her complaints were that the PGO did nothing to prevent a relative from allegedly acquiring assets belonging to her mother fraudulently and that they and the Court failed to supervise adequately Mr B as Receiver. Ms A also complained that the

PGO delayed and mishandled her application to be appointed Receiver in place of Mr B and showed her a poor level of customer service when dealing with her complaint.

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

**We found that the PGO delayed processing Ms A's application and mishandled her complaint. Numerous letters went unanswered, phone calls were not returned and emails were not responded to. The PGO showed a very poor standard of customer service when dealing with Ms A's complaint.**

**We asked the Chief Executive to apologise directly to Ms A on behalf of the PGO. To reinforce their apologies, the PGO paid her £300 in recognition of the poor complaints handling and the worry and distress that they caused. They were also willing to reimburse Ms A for any financial loss that was caused directly by their delays.**

### PGO summary 2

Mr B complained that delays in the PGO's handling of his application to become Receiver for his father allowed other family members to steal his father's money. Mr B alleged that the same family members had been stealing money from his father for about 10 years prior to the PGO's involvement.

Unfortunately, Mr B's father died before the Short Order appointing Mr B as Receiver came into force. Mr B claimed compensation from the PGO for the loss to his father's estate. The PGO concluded that they had not caused any delay but Mr B could not accept this view and asked the Adjudicator to investigate.

### We did not uphold this complaint

We saw that there had indeed been delays in dealing with the application but did not conclude that the PGO were directly responsible for these. For the most part, they were the consequence

of a decision by the Court of Protection to allow the other family members more time to obtain evidence to demonstrate their view that Mr B's father was capable of administering his own financial affairs. We could not comment on these delays, as the Adjudicator cannot look at judicial decisions made by the Court of Protection.

We also saw that there had been unavoidable delays when the PGO were waiting for information from Mr B's solicitor before they could progress matters. Overall, we did not find that the PGO had caused any unreasonable delays in the handling of Mr B's application to become Receiver for his late father.



## The Insolvency Service

The Insolvency Service, an Executive Agency of the Department of Trade and Industry, deals with insolvency matters in England and Wales and some limited insolvency matters in Scotland. Through its network of Official Receivers and various headquarters divisions, The Insolvency Service is responsible, amongst other things, for:

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



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

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

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



### **The Insolvency Service summary 1**

Mr A was made bankrupt in late 2004 and, in accordance with the new legislation, stood to be automatically discharged from bankruptcy a year later.

In mid 2005, the Official Receiver (OR), having concluded his investigation and administration, gave the creditors and the trustees, who had been appointed soon after the bankruptcy order, notice of his intention to file for an early discharge.

In line with legislation, the trustees objected. They offered the OR evidence, but were not sure that they could provide a detailed report within the 28 days specified. The OR, however, took their professional capacity as sufficient to uphold the objection without wishing to see any evidence. As a result, the process was suspended. Mr A became aware of this and complained.

The OR refused to reconsider without support from the trustees and also refused to give detailed information to Mr A about the objection, on the basis that the letter was confidential. Mr A claimed that he suffered detriment in terms of substantial lost opportunities, resulting from what he believed to be an unreasonable attitude by the OR.

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

We examined The Insolvency Service's relevant guidance and it was clear that early discharge was not a bankrupt's right. Nevertheless, while early discharge is effectively a matter for the OR's discretion, it appeared to be the presumption that, if there were no matters to be investigated and the administration was complete, early discharge would be applied for in every case. The exception was for those cases where 10 months had elapsed since

the bankruptcy order, where there would be insufficient time for the process to be completed.

If the process is begun, then notice is given to creditors and any appointed trustee of the OR's intention. This seemed to us to be at odds with other parts of the guidance, which suggested that steps should be taken before the notice is sent, to ensure that assets had been dealt with satisfactorily.

Any objection to the OR's intention had to be submitted within 28 days and the OR had to decide whether there were any matters raised in the objection that might change his/her decision to proceed with the early discharge process. The guidance included a list of possible objections which, while not exhaustive, seemed to suggest that matters of concern should be identifiable and not already known to the OR. It was clear that future potential misconduct should not be considered; nor should enforcement procedures and the public profile of the bankrupt be considered, unless there was evidence that the bankrupt was culpable.

While the bankrupt appeared to have no right of appeal in the matter, the creditors/trustees could appeal to the Court against the OR's decision not to uphold the objection.

We found little in The Insolvency Service's guidance for those exercising discretion generally. In this particular case, we could see no evidence that any other factors came into play, although it was clear that certain factors, including the intention of parliament, were discussed.

We found insufficient evidence for us to

**The Insolvency Service case summaries**

conclude that the OR had reached an informed, balanced decision in this case. Mr A had no right to challenge what had been done but The Insolvency Service's files showed little, if any, reasoning behind the decision; indeed, it seemed to us that most of the justification for the decision appeared only after Mr A's complaint.

In cases such as Mr A's, involving the exercise of the OR's discretion, the Adjudicator will not substitute her decision for that of the official decision-maker, unless it appears to her that the decision is unreasonable. In Mr A's case, we were unable to say that the decision itself was unreasonable but, in the absence of evidence, we were unable to conclude that it had been arrived at in a reasonable manner, taking account, for example, of relevant factors and not giving weight to irrelevant factors.

In these circumstances, we invited the OR to reconsider his decision, taking into account all relevant factors and ignoring those that were not relevant. We recognised that the passage of time brought the 10-month rule into consideration but, in our view, the process had already started and could, therefore, continue.

As regards detriment, we took the view that the losses claimed by Mr A were speculative rather than substantive and, in any event, could not be seen to arise as a direct result of any mistake on The Insolvency Service's part.

We felt that The Insolvency Service's practices and internal guidance offered scope for improvement and we provided them with some feedback to that end. We were very pleased to learn that, as a result of our feedback, The Insolvency Service took steps to clarify and improve their guidance.



**The Insolvency Service summary 2**

Mr B collects certain antique items. He sent two items to a third party, Mr C, for him to restore. In 2001, Mr C advised his customers of financial difficulties and, in January 2002, presented his own petition for bankruptcy. The OR deals with such cases.

Unfortunately, Mr C had somewhat misled his clients about the true picture, and Mr B was happy to allow work to continue. Mr C did not appear to have told the OR about Mr B and, despite Mr C revealing the existence of work in progress, the OR did not appreciate that Mr C had third party goods in his possession.

At some point during 2002, the OR became

aware of Mr B and wrote to Mr C asking him to arrange for the restoration or return of Mr B's items but nothing appears to have happened between Mr B and the OR for nearly a year. Mr B then began asking the OR for assistance in pressurising Mr C for the return of the items. The OR duly gave Mr C various warnings about the consequences of non co-operation, which resulted in the return of the items early in February 2004.

Mr B was unhappy with the role of the OR and made a formal complaint. Unfortunately, the OR did not recognise it as a complaint and did not deal with it as such.

Mr B complained that the OR was negligent and that, if he had done his job properly, Mr B would not have taken so long to recover the items and parts would not have been lost.

**We did not uphold this complaint**

In our view, whilst the OR's handling of Mr C's affairs was less than satisfactory, the only duty that the OR had to Mr B was to inform him of Mr C's bankruptcy and ask him to collect his goods if he so wanted. Moreover, the OR's ignorance of Mr B's existence was as much the responsibility of Mr C as the result of the shortcomings in the OR office's enquiries. Mr C had a duty to provide information but did not.

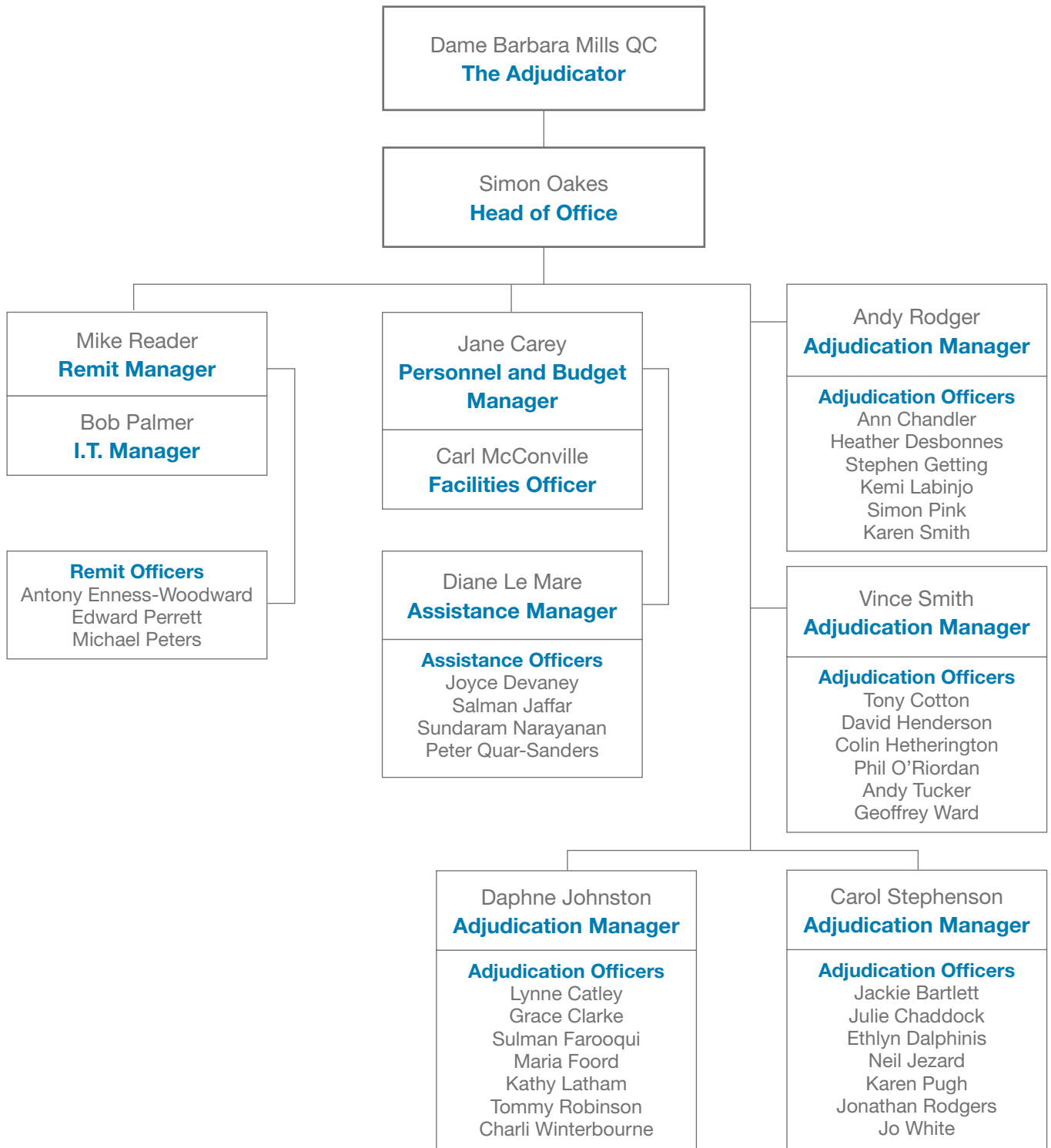
We concluded that, although Mr B experienced difficulties and delays in retrieving his goods from Mr C, the OR could not be held responsible. The deterioration of the goods and the missing items could have occurred at any time during the two years it took to get them back, or indeed, even before Mr C's bankruptcy.

We could see that, once he was aware

of Mr B, the OR took steps to fulfil his obligations. In our view, although the OR's responsibility ended following his warning letter to Mr C, he provided further helpful assistance in 2003 which, in our view, encouraged the return of the goods rather than delayed it.

# Appendix 6

## Staff Chart as at 31 March 2006





# Appendix 7

## Contact details

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# Appendix 8

## Publications

### Leaflets and flyers

- AO1 - The Adjudicator's Office for complaints about HM Revenue & Customs and Valuation Office Agency (also available in shortened 'flyer' format)
- AO3 - Meetings with the Adjudicator's Office - Guidance for complainants
- AO4 - Meetings with the Adjudicator's Office - Guidance for departmental staff
- AO5 - The Adjudicator's Office for complaints about the Public Guardianship Office
- AO6 - The Adjudicator's Office for complaints about The Insolvency Service

### Annual reports



2005/2006



2004/2005



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