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	A D J U D I C A T O R ' S
	O F F I C E

Annual Report 2008



The Adjudicator's Office
Annual Report for the year
to 31 March 2008

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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 2008, the ninth report covering my work as Adjudicator and the fifteenth concerning the work of this office.



The Adjudicator, Dame Barbara Mills DBE QC

This has been a difficult year, both for this office and HMRC. I continued to receive a high number of tax credits complaints. With these still comprising over 80% of all the complaints that come to us, our work is especially sensitive to any changes or developments in that area. For HMRC, the continuing progress it has made was overtaken by the data loss issue that came to light last November. Coinciding as it did with the outcome of the Cabinet Office's Capability Review, this had a major impact on the organisation. A root and branch review of the department's data handling was initiated,

resulting in a number of changes aimed at restoring public confidence and improving and clarifying accountability within HMRC. A process is now underway to appoint a Non-Executive Chairman and a Chief Executive. They will have my best wishes in meeting the challenges ahead, and I look forward to working with them both in the coming year.

Tax credits apart, this year saw little change concerning complaints about the rest of HMRC, the Valuation Office Agency (VOA), The Insolvency Service (IS) or the Public Guardianship Office (which became the Office of the Public Guardian (OPG) in October 2007).

Turning to tax credits, in last year's report I highlighted my considerable and longstanding concerns with HMRC's approach to the writing off of overpayments, as codified in Code of Practice 26 (COP 26). In response to this, and similar concerns expressed elsewhere, at the end of June 2007 the then Paymaster General announced a review of the "reasonable belief" test in COP 26. This resulted in HMRC modifying the test so that, where an overpayment arises from an HMRC mistake, the decision on whether to write off the overpayment is now based on whether both the claimant and HMRC have met their obligations; rather than, as before, on what the claimant could reasonably be believed to have been the position at the time of the overpayment. I think this is a substantial improvement. The Tax Credits Office (TCO) have to make a great many

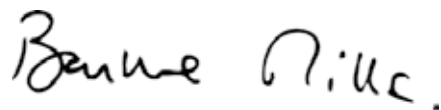
of these decisions. The revised rules should make it easier for them to arrive at decisions that are fair and consistent for large numbers of claimants over widely differing ranges of circumstances.

Last year, I anticipated a significant fall in turnaround times for the more straightforward tax credits cases we deal with. In the event, while there was an improvement for many of such cases, overall our average turnaround time from first receiving the complaint to resolution increased from 21.25 to 23.44 weeks. This was due, in part, to the continuing high number of tax credits complaints we received. Our work was also substantially disrupted by both a hiatus in our working of tax credits complaints while the policy on how the revised COP 26 applied to existing cases was being finalised; and because of the reworking by the TCO of some cases to ensure they had been handled in accordance with Section 18 of the Tax Credit Act 2002. That said, for the year we settled 1,720 cases against 1,419 last year, broadly maintained our customer satisfaction levels and settled 98.43% of all our cases within 44 weeks. So the overall level of service we have given complainants has not been at the expense of long delays for a significant minority.

As a result of this disruption, however, towards the end of the year we did find ourselves with a large and growing number of complaints on hand. So I am pleased to say that HMRC agreed to increase the office's resources for 2008/09 to deal with this. As I write, we are in the process of setting up a team of 10 Adjudication Officers in Derby. I am confident this additional resource will ensure we can continue to give our complainants the level of service they are entitled to expect.

HMRC agreed to this increase in our complement against the backdrop of both a very tight funding position for 2008/09, and an ongoing commitment to reduce jobs and produce savings. I take this as a welcome sign of HMRC's commitment to good complaints handling and ensuring that its customers who receive poor service are treated properly

and fairly. This is of particular importance for tax credits, where many complainants are vulnerable or on low incomes. During the year, HMRC has delivered a number of improvements to the tax credits system, most notably the changes to COP 26 I mentioned earlier. There are still features of the system, however, which cause a minority of claimants serious problems; especially for those whose circumstances change frequently. There was a welcome further reduction, this year, in the percentage of tax credits complaints we upheld, either fully or partially, from 56% to 48%. This still, however, falls some way short of the 25% achieved for non-tax credits HMRC complaints. So it is important the commitment HMRC has shown to us is also reflected in a wider commitment to continuing to improve its complaints handling for tax credits complainants generally.



Dame Barbara Mills
The Adjudicator



The work of the Adjudicator's Office

Our role

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

HM Revenue & Customs, including the Tax Credit Office, The Valuation Office Agency, Office of the Public Guardian and The Insolvency Service.

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

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

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

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

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

Making a complaint to the Adjudicator's Office

Before we look at a complaint, we expect the organisation concerned to have had an opportunity to resolve matters at a senior level.

This means that complainants will need to have exhausted the organisation's own complaints procedure before contacting us. It is our role to consider whether or not the organisation has handled the complaint appropriately and given a reasonable decision. Where we think they have fallen short, we will recommend what they need to do to put matters right under the terms of their guidance on complaints. This may include making suggestions where we think this could be of benefit to the wider public.

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

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

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

How we settle complaints

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

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

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

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

A change of address

The Adjudicator's Office was created in May 1993 and was based at Haymarket House in Piccadilly, central London. In summer 2007, in order to reduce our accommodation costs, it was decided that we would move to Euston Tower, also in central London. The move took place on 14 January 2008. Our new contact details are in Appendix 8.



Euston Tower

Extra resources

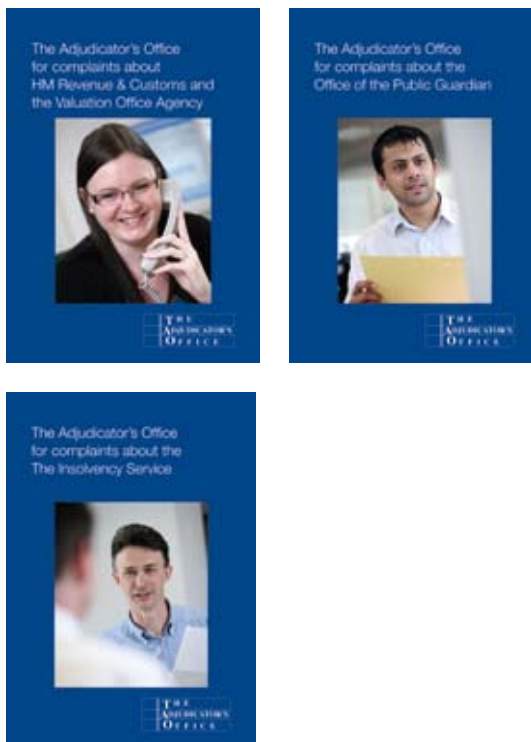
Towards the end of the year we had a large and growing number of complaints on hand. In order to help us maintain the level of service to our customers, HMRC agreed to increase the office's resources for 2008/09. As a result of this, we are currently in the process of setting up a team of 10 Adjudication Officers based in Derby, in the East Midlands. We hope that this team will be up and running in the summer of 2008.



Derby

Communication

We have developed our communications with our complainants and organisations this year. Shortly after our move to Euston Tower, we published a revised AO1 leaflet (for complaints about HMRC and the Valuation Office Agency), containing our new contact details. We have also recently published revised versions of our AO5 leaflet (for complaints about the Office of the Public Guardian) and AO6 leaflet (for complaints about The Insolvency Service). Both these revised leaflets contain our new contact details but also reflect developments in the organisations concerned. We have continued to encourage the organisations to issue our leaflets to complainants at the appropriate stage of the complaint (when that organisation's own complaints procedure has been exhausted).



Clockwise from left: Leaflets AO1, AO5 and AO6

Our website has been updated and revised this year. We will be looking to develop the website further in the coming year and make it more accessible to our customers.



The Adjudicator's Office website homepage

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 aim to 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.

The organisations often invite us to comment on draft leaflets and instructions. During the course of this year, HMRC consulted us about the revised COP 26 and also about the way in which HMRC engages with agents.

The Tribunals Service, which deals with, amongst other things, tax appeals, is undergoing major transformation by the Ministry of Justice. This transformation will see the establishment of a new "lower tier" appeal body hearing appeals across all the taxes previously overseen by the General and Special Commissioners, and the VAT and Duties tribunals. We have been asked by HMRC to be a "key stakeholder" in respect of the work that HMRC now need to take forward to establish a workable system, which will become fully functional and operational by April 2009.

We also host visits from staff who work in the organisations' complaint teams to share best practice and improve working relationships.



Overview

HM Revenue & Customs

This has been a difficult year for HMRC. The loss of the data discs in November 2007 coincided with the publication of the Cabinet Office's Capability Review of the department. The former led to the resignation of the then Chairman, and a root and branch review of how the department handled its data. The latter praised the department in a number of areas, especially its continued delivery of revenue to the Exchequer whilst progressing one of the largest UK public or private sector mergers. It also, however, highlighted a number of weaknesses; most notably in the areas of leadership, senior accountability and its capacity to make evidence based strategic decisions. HMRC has responded with a number of measures to address these issues,

could not progress these for a number of weeks until the policy was finalised. Secondly, the Tax Credit Office (TCO) reopened a number of cases to ensure they complied with Section 18 of the Tax Credit Act 2002. This required us to suspend for a period the working of 227 tax credits complaints. The resultant disruption to our work, coupled with the continuing high level of tax credits complaints, meant that towards the end of the year we had a large and growing number of complaints on hand.

To ensure that, going forward, this backlog did not impact negatively on our service to complainants, HMRC agreed to the funding of 10 additional Adjudication Officer posts for 2008/09. Over the longer term, the number of tax credits complaints received by HMRC has fallen from 2006/07 to 2007/08. Coupled

“The major issue for this office is the continuing high level of tax credits complaints coming to us.”

and a process is underway to appoint a new Non-Executive Chairman and a Chief Executive.

We have highlighted in previous reports HMRC's success in effecting the merger of the Inland Revenue and HM Customs & Excise without a negative impact on its customers; and from our perspective this continues to be the case. The major issue for this office is the continuing high level of tax credits complaints coming to us. As well as putting a strain on the office's resources, it renders our work, and the level of service we offer complainants, especially sensitive to any changes or developments in that area. Two factors in particular had such an impact. Firstly, HMRC were consulting us, the Ombudsman and the voluntary organisations on the revised COP 26. One of the issues was how it should apply to existing cases which meant that we

with the other developments mentioned below, we hope this will eventually lead to reduced pressure on the office.

Tax Credits – the revised Code of Practice 26 and other developments

Last year's report was critical of the test (codified in COP 26) that HMRC then applied when deciding whether to write off tax credits overpayments that arose from their error. The core test was whether it was reasonable for the claimant to have believed their award was correct – the “reasonable belief” test. This was a test that did not take into account the impact on the claimant of HMRC's mistake in making the overpayment. It also, given the context within which the test was framed, represented for many a very high hurdle. This was a source

of frustration to many of the complainants who came to us, especially vulnerable claimants, or those on low incomes, who were left either with reduced awards for some years into the future, or in debt.

In her letter to the Chairman of the House of Commons Treasury Committee, John McFall MP, on 25 June 2007, the Paymaster General said the following:

"The operation and understanding of the "reasonable belief" test was also discussed when I gave evidence on the 14 March.

Currently the test is a two step process. Overpayments are written off where they arise from an HMRC error, and it was 'reasonable for the claimant to have believed their award was correct'. This test was designed to strike a balance between fairness to claimants and the taxpayer in general.

Informed by discussion with the Adjudicator, I have decided to ask HMRC to take steps to clarify the nature of the test and set out more clearly what steps claimants need to take, and what they can expect in return from the Department.

The revised test would clarify the claimant's responsibilities to provide HMRC with accurate and up to date information when they make their claim, check the information given them on their award notice and report promptly about any changes that may affect their award, and check the payments they receive match what we told them they should receive. If a claimant meets all their responsibilities then any overpayment caused by official error would be written off.

This change will build on the improvements HMRC have already made to improve communications with claimants and I believe this will significantly clarify for claimants what is expected from them. I have asked HMRC to consult on the detail of the proposed change to see what claimants and their representatives think and, if they share my view that this is a positive change, then to work towards amending COP 26 as a matter of urgency."

As a result of this consultation, the Financial Secretary to the Treasury announced a revised COP 26, which was put in place at the beginning of 2008. Where an overpayment arises from an HMRC mistake, the decision on whether to write off the overpayment is now based on whether both the claimant and HMRC have met their obligations; rather than, as before, on what the claimant could reasonably be believed to have been the position at the time of the overpayment. There is also an "exceptional circumstances" test, which allows HMRC to take into account a wider range of mitigating circumstances when deciding whether there was good reason why the claimant could not have been expected to have met their obligations.

We will be in a better position to say how successful the revised COP 26 has been next year. These revised rules should, however, make it easier for the TCO to make decisions

"Where an overpayment arises from an HMRC mistake, the decision on whether to write off the overpayment is now based on whether both the claimant and HMRC have met their obligations rather than, as before, on what the claimant could reasonably be believed to have been the position at the time of the overpayment"

that are fair and consistent for large numbers of claimants in widely differing situations. The "exceptional circumstances" test is of particular help here. There have always been hardship provisions in COP 26 for those who find it difficult to repay an overpayment, and these do take into account the individual circumstances of the case. They are so tightly drawn however, based as they are on principles that apply across all of HMRC's businesses,

that they are only of relevance for a limited number of cases; and even then, the normal outcome is for repayment of the overpayment to be spread over a longer period, rather than being written off altogether.

That said, for those complaints concerning disputed recovery of overpayments where application of the hardship provisions may be of relevance, it is important this aspect is considered alongside the rest of the complaint. In the past, this has not always been the case for the complaints coming to us. The Adjudicator's role is to review HMRC's decisions, not to make administrative decisions herself. So, during the year, the TCO agreed that, for all complaints where application of the hardship provisions was potentially of relevance, this aspect would be considered before the complaint came to us.

Other improvements to the tax credits system during the year include, following a successful pilot, a new service for couples whose relationship has broken down, allowing each partner to initiate a new single claim over the phone. This is part of HMRC's Tax Credits

Transformation Programme, which aims to improve the system for families by introducing a set of services and communication which are tailored to their needs and circumstances. It has run several other pilot projects, and in the Budget the Chancellor has announced further improvements which will be delivered through the Programme. Where appropriate, we will continue to work with HMRC to monitor, and help maximise, the benefits from these initiatives.



Simon Oakes, Head of Office



Tax credits complaints handling

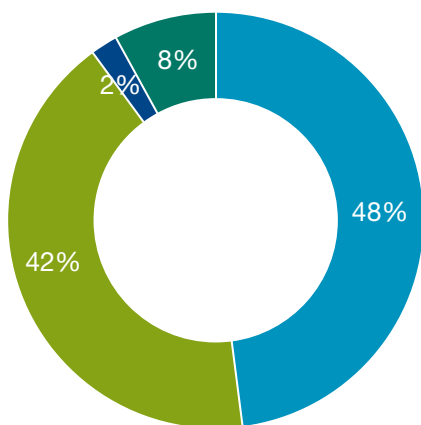
From our perspective, the COP 26 changes are of great importance. Despite the progress made over the last few years, there are still features of the tax credits system which cause a minority of claimants real difficulties; especially for those whose circumstances change frequently. There are also still a significant number of claimants with problems, the origins of which can be traced back to difficulties with the system they encountered in 2003/04. It is important all these claimants are treated properly and fairly; and having in place a fit for purpose COP 26 lies at the forefront of achieving this.

For these reasons, it is also important HMRC continue to improve their complaints handling for tax credits claimants. This year, there was a further reduction in the percentage of tax credits complaints we upheld, either wholly or partially in the complainant's favour, from 56% to 48%. This is a welcome development, but further improvements are needed. Our upheld rate for non-tax credits HMRC complaints is 25%; and that is the benchmark towards which HMRC should be aiming for tax credits complaints. Securing such improvements will be a challenge. TCO staff are committed fully

to delivering quality complaints handling. As we have mentioned in previous reports, however, the IT and business design (especially the lack of a proper caseworker facility) make it difficult for staff to put things right quickly and cleanly when things go wrong, or even, in many cases, have a clear view of the full sequence of events. This especially hampers the satisfactory resolution of tax credits complaints.

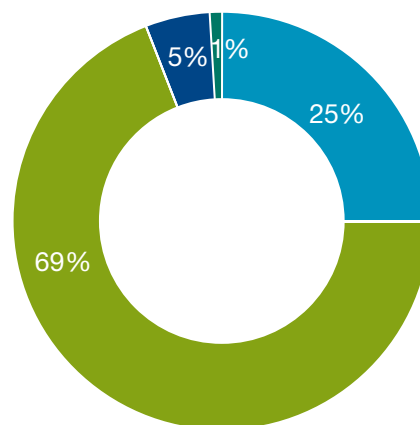
Going forward, the TCO have now begun to roll-out a new way of handling overpayment disputes and complaints. Teams will be responsible for a specific group of claimants (split by surname), and they will handle any dispute, review or Tier 1 or Tier 2 complaints concerning those claimants. The intention is to eliminate unnecessary steps in the process, and standardise the service in a way that ensures better quality and consistency. The intention is also to ensure that lessons learned from why complaints remain unresolved are fed back systematically in ways that ensure continuous improvement of the process. From our perspective, this is especially welcome as a common reason for escalation is a failure to address properly all aspects of the complaint at an early stage.

Outcome of complaints about tax credits



Upheld
 Not upheld
 Withdrawn
 Department reconsidered

Outcome of HMRC complaints (excluding tax credits)



Upheld
 Not upheld
 Withdrawn
 Department reconsidered



This new process should be fully in place by September 2008. Together with improvements in communications to complainants, and the revised COP 26, these changes provide a platform from which tax credits complaints handling can hopefully progress significantly towards the standards delivered by the rest of HMRC. We will continue to work with the TCO to help achieve this.

We mentioned last year that, to meet the challenges posed by the increase in tax credits complaints coming to us, we had worked with the TCO to put in place streamlined and more flexible working arrangements. These were designed to ensure their reports were better tailored to the circumstances of the case and, in the more straightforward cases, the necessary reviews could be undertaken quickly. These arrangements have continued to enable us to deal with the high number of tax credits complaints in ways that ensured we gave a good service to all tax credits complainants, rather than – by taking across the board a more traditional, one size fits all approach – give a

good service to some at the expense of other complainants experiencing very severe delays.

Identifying the scope in some cases to adopt a more outcome based process, proportionate to the issues raised by the complainant, requires both a degree of judgement, and a greater reliance on the information provided by the TCO. The upheld rate (48%) over the last year was similar for both types of approach. This suggests, overall, we got the balance right. With a new approach such as this, however, it was important we learned lessons as we went along; and we have worked with the TCO to modify these arrangements, as necessary, in the light of such feedback.

Other complaints about HMRC

As with previous years, there has been little change regarding the other main areas for complaint. These are:

- Tax coding and the application of ESC A19
- Tax investigations and enquiries
- VAT assurance work.

The Valuation Office Agency

During the year, we took up for investigation 16 Valuation Office Agency (VOA) cases and settled 11. The majority of these related to council tax banding or business rating disputes. Whilst we can look at the way the VOA have handled such cases, the actual decisions on the council tax banding or rateable value are matters for a tribunal and consequently outside our remit. However, we have seen a number of cases where the complainant expected us to investigate these aspects of their complaint as well as the handling issues.

Of the 11 cases we settled during the year, five were wholly or partially upheld and six were not upheld. The shortcomings we identified included delays, failure to keep the customer informed, poor complaints handling, and, as illustrated by the case summary in Appendix 6, inadequacies in the published guidance.

Office of the Public Guardian

The Office of the Public Guardian (formerly the Public Guardianship Office) was brought into being on 1 October 2007 by the Mental Capacity Act 2005. The Act created a new public official, the Public Guardian, who is supported by the Office of the Public Guardian (OPG). The OPG is an Executive Agency of the Ministry of Justice.

The OPG has a wider role than its predecessor, the Public Guardianship Office (PGO). In conjunction with the Court of Protection it is responsible for protecting the financial, health and welfare affairs of people who lack mental capacity.

Its role is to supervise Deputies who are appointed by the Court to manage an incapacitated person's affairs. The Deputy might be a family member or friend of the person concerned, or a local authority or other professional such as a solicitor. The OPG also registers Lasting Powers of Attorney when an individual has lost or is losing mental capacity.

As at 31 March 2008 we had not received any complaints about the OPG. The case summary in Appendix 6 illustrates the sorts of issues that



are typical in our investigations of complaints brought about the PGO.

PGO/OPG Complaints handling

In the past year the PGO maintained the level of complaints handling that we had reported previously. During the year we took on 15 cases for investigation and settled 11. This compares with eight settlements in the previous year.

Of the 11 cases settled, seven were classified as not upheld, three were classified as wholly or partially upheld and one was withdrawn. In these cases we found that there had been shortcomings in the way the PGO had handled correspondence and requests from Receivers, Attorneys and complainants. These had led to frustration and confusion and, on occasion, actual financial loss. I am very pleased to say that, when we brought these matters to the attention of the PGO, they recognised that improvements needed to be made and, as part of the reorganisation brought about by the creation of the OPG, they are taking action to improve their service to customers.

The Insolvency Service

The Insolvency Service, an Executive Agency of the Department for Business, Enterprise and Regulatory Reform, deals with insolvency matters in England and Wales, and some limited insolvency matters in Scotland. Through its network of Official Receivers, and various headquarters divisions, The Insolvency Service is responsible, amongst other things, for undertaking the initial administration of the estates of bankrupts and companies in compulsory liquidation; acting as trustee/liquidator where no private sector insolvency practitioner is appointed; investigating the circumstances and causes of failure of companies wound up by the court and of individuals subject to bankruptcy orders; and reporting any misconduct on the part of directors or bankrupts. It also deals with such things as the disqualification of directors, and the authorisation and regulation of the insolvency profession.

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

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

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 we cannot consider complaints about actions or decisions which have an established means of challenge through the courts. We therefore need to examine complaints about The Insolvency Service very carefully to ensure that we investigate only those matters which do not have their resolution through the courts. Only the court can reverse or modify a decision about the administration of an insolvent estate.

Complaints about The Insolvency Service

We received very few complaints about The Insolvency Service in 2007/08. We took on eight new cases for investigation this year, and settled eight. Of these, we wholly or partially upheld two, and did not uphold six.



Appendices

Appendix 1 – Statistics

All complaints

In 2007/08, we took on for investigation 2,017 complaints, compared to 2,227 in 2006/07. We settled 1,720 investigations, compared to 1,419 last year.

Assistance cases

In 2007/08, the Assistance team answered 4,231 general enquiry phone calls, compared to 6,509 in 2006/07. These calls covered a wide variety of topics, including requests for information about our complaints procedures and enquiries about the progress of complaints being dealt with by the office.

In 2007/08, we took on 6,100 complaints as assistance cases, compared to 6,941 in 2006/07. These are cases where the organisation has not had the opportunity to consider the complaint and we refer it back to them to deal with.

Outcome of all complaints

Year	2006/07	2007/08
Upheld (either wholly, or in part)	644 (45%)	757 (44%)
Not upheld	672 (47%)	806 (47%)
Withdrawn	66 (5%)	41 (2%)
Department Reconsidered	37 (3%)	116 (7%)
Total	1419	1720

HM Revenue & Customs

In 2007/08, we took on for investigation 1,971 complaints about HMRC, compared to 2,184 in 2006/07. We settled 1,690 HMRC investigations, compared to 1,390 last year.

Outcome of all HMRC complaints (including tax credits)

Year	2006/07	2007/08
Upheld (either wholly, or in part)	640 (46%)	747 (44%)
Not upheld	648 (47%)	787 (47%)
Withdrawn	65 (5%)	40 (2%)
Department Reconsidered	37 (3%)	116 (7%)
Total	1390	1690

Note: All percentages in this Appendix are rounded up. In the above table, this means that the 2006/07 percentages add up to 101%.

Outcome of all HMRC complaints (excluding tax credits)

Year	2006/07	2007/08
Upheld (either wholly, or in part)	63 (18%)	75 (25%)
Not upheld	272 (76%)	207 (69%)
Withdrawn	22 (6%)	15 (5%)
Department Reconsidered	0 (0%)	2 (1%)
Total	357	299

Complaints about tax credits

Of the HMRC complaints we took on for investigation in 2007/08, 1,543 were about tax credits, compared to 1,774 in 2006/07. We settled 1,391 investigations about tax credits, compared to 1,033 last year.

Outcome of complaints about tax credits

Year	2006/07	2007/08
Upheld (either wholly, or in part)	577 (56%)	672 (48%)
Not upheld	376 (36%)	580 (42%)
Withdrawn	43 (4%)	25 (2%)
Department Reconsidered	37 (4%)	114 (8%)
Total	1033	1391

Compensation

In 2007/08, we recommended HMRC pay a total of £142,307 compensation to complainants, compared to £96,902 in 2006/07.

In 2007/08 we recommended that HMRC give up tax and interest amounting to £40,642, compared to £11,005 in 2006/07. We also recommended that HMRC write off £673,469 in overpaid tax credits, compared to £307,225 last year.

HMRC accepted all of the Adjudicator's recommendations.

The Valuation Office Agency

In 2007/08, we took on for investigation 16 complaints about the VOA, compared to 18 in 2006/07.

We settled 11 investigations, the same number as last year. Of the 11 cases we settled, five were wholly or partially upheld and six were not upheld.

In 2007/08, we recommended that the VOA pay a total of £110 compensation to complainants, compared to £60 in 2006/07.

The VOA accepted all of the Adjudicator's recommendations.

Office of the Public Guardian

In 2007/08, we did not take on for investigation any complaints about the OPG. We took on for investigation 15 complaints about the PGO, compared to 13 in 2006/07.

We settled 11 investigations, compared to eight last year. Of the 11 cases we settled three were wholly or partially upheld, seven were not upheld and one was withdrawn.

In 2007/08, we recommended that the PGO/OPG pay a total of £850 compensation to complainants, compared to £463 in 2006/07.

The PGO/OPG accepted all of the Adjudicator's recommendations.

The Insolvency Service

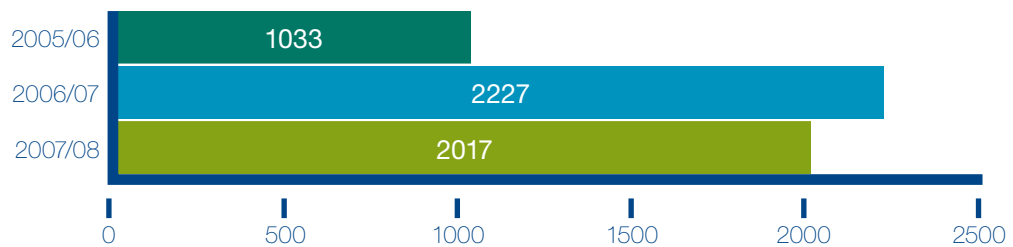
In 2007/08, we took on eight cases for investigation, compared to 12 in 2006/07. We settled eight investigations, compared to 10 last year. Of the eight cases we settled two were wholly or partially upheld and six were not upheld.

In 2007/08, we did not recommend that The Insolvency Service pay any compensation to complainants. This was also the case in 2006/07.

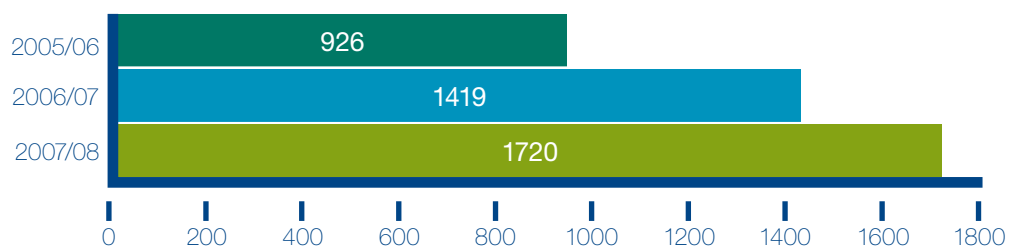
The Insolvency Service accepted all of the Adjudicator's recommendations.

Appendix 2 – Complaints received and settled – three year overview

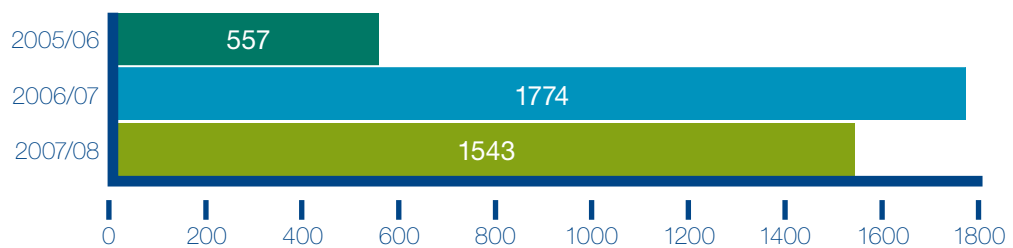
All complaints received 2005/06 to 2007/08



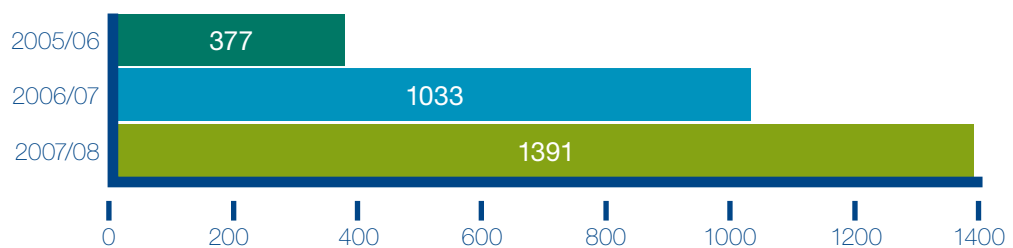
All cases settled 2005/06 to 2007/08



Tax Credit complaints received 2005/06 to 2007/08



Tax Credit complaints settled 2005/06 to 2007/08



Appendix 3 – Key performance measures and targets

Assistance & Remit work

Description	Target	Achieved
Where written response required, % Assistance response within 10 working days	95%	97.28%
% of cases where report requested within 5 working days of the decision to investigate	95%	92.89%

Investigation work

Description	Target	Achieved
% of investigation cases where complainant and organisation are informed of allocation within 5 working days	95%	96.82%
% of investigation correspondence dealt with within 15 working days	95%	98.34%
Average investigation turnaround in weeks	19.50 weeks	23.44 weeks
% of investigation cases closed within 44 weeks	99.50%	98.43%
% of complainants satisfied with the way we handle their complaint at investigation level	70%	66%

Appendix 4 – Customer satisfaction

We have two main customer groups:

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

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

Complainants

Last year, in conjunction with BMRB, we amended our customer survey to reflect the changing role of our office. This year, using the same criteria, BMRB contacted 208 complainants and sought feedback on a number of key service issues. The surveys provide us with useful data on overall satisfaction levels and give an indication of where we may need to make improvements in the way we work. The main results were as follows:

Overall satisfaction

In 2007/08, the overall level of satisfaction with our service was 66%, compared to 68% in 2006/07. As the table below demonstrates, this figure has remained broadly consistent over the past four years. This is pleasing to note, given the significant increase in our workload over the same period.

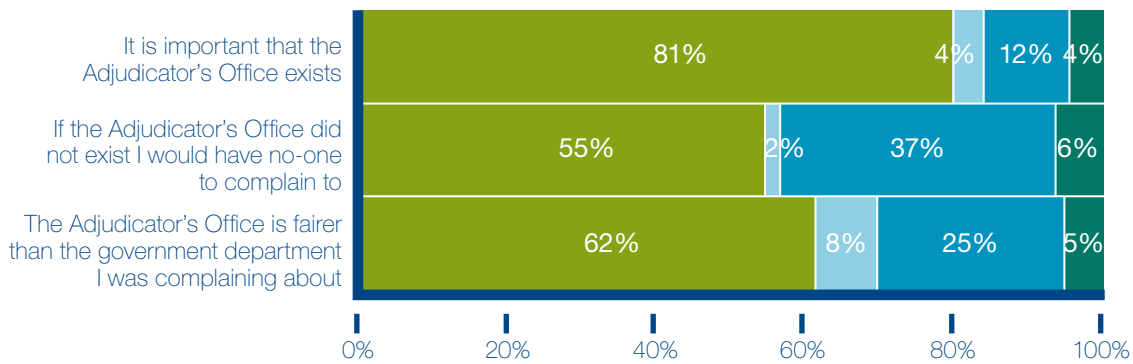
Level of satisfaction with the service received from the Adjudicator's Office

Year	2004/05	2005/06	2006/07	2007/08
Base: All respondents	131	249	274	208
	%	%	%	%
Very satisfied	41	41	36	29
Fairly satisfied	24	27	31	37
Not very satisfied	18	12	12	13
Not at all satisfied	15	19	20	21
Satisfied	65	67	68	66
Not satisfied	34	31	32	34

Complainants continued to positively respond to questions about the importance of the Adjudicator's Office on the complaints map, and the extent to which we are seen as fair. This is demonstrated in the table below.

Feelings on the value and usefulness of the Adjudicator's Office
Base: All complainants (208)

Agree
 Neutral
 Disagree
 Don't know



Note: All percentages in this chart are rounded up and this means that the answers to the first question add up to 101%.

Over the next few months, we will be carefully reviewing the results of the customer survey in order to identify if we need to make any improvements in the way we work.

The organisations

We received some positive feedback from HMRC this year. They told us that they recognise that the learning of lessons from complaints has a key role to play in delivering the department's ambition, and they value the suggestions they receive from the Adjudicator.

They have also told us that, over the next year, they will be looking at how they can best work with the Adjudicator's Office to influence change within the department.

We also received some positive feedback from the VOA this year. They told us that our suggestions for improvement are always helpful. They also say that they have appreciated the personal contact and support staff from our office have provided when attending meetings of their Chief Executive's Customer Service team.

Appendix 5 – Budget

	2006/07	2007/08
Staffing	£1,919,083	£1,882,050
Other operating costs	£69,392	£57,820
Capital	N/A	N/A
Total	£1,988,475	£1,939,870

Note: As at 3 June 2008, our accommodation costs for 2007/08 were £435,891 (£412,620 for 288 days at Haymarket House and £23,271 for 77 days at Euston Tower). Our accommodation costs for 2006/07 were £423,541.

Appendix 6 – Case Summaries

HM Revenue & Customs

Tax Credit case summaries

As was the case last year, the great majority of tax credit complaints that we receive are about HMRC's refusal to write off an overpayment.

HMRC's decision on whether to write off an overpayment is made in accordance with COP 26 – "*What happens if we have paid you too much tax credit?*" which was revised on 31 January 2008.

If a claimant disputes an overpayment, HMRC will check whether the claimant has met their responsibilities, and whether HMRC have met theirs.

HMRC will check:

- that HMRC accurately recorded and acted on any information the claimant gave them within one month of the claimant telling HMRC about a change of circumstance
- HMRC accurately calculated and paid the claimant their correct entitlement
- that the information HMRC included on the claimant's award notice was accurate at the date of the notice
- what the claimant told HMRC if they contacted them, and whether the advice HMRC gave them based on that information was correct. HMRC will also check whether the claimant contacted them to discuss any queries on their award notice, and whether HMRC answered them.

HMRC will also check:

- that the claimant gave HMRC accurate and up to date information when they claimed tax credits
- that the claimant told HMRC about any changes of circumstance at the right time (in the timescales listed on the checklist that accompanies award notices)
- that the claimant checked their award notice within one month of getting it and checked that the payments they got matched the amounts on the award notice
- that the claimant checked their award notice within one month of getting it and if and when they told HMRC about any mistakes
- whether the claimant told HMRC of any exceptional circumstances that meant they could not tell HMRC about a change of circumstances or about HMRC's mistake within one month.

Once HMRC have checked whether the claimant has met their responsibilities and HMRC have met their responsibilities they will make a decision about whether the overpayment should be paid back.

By the end of the 2007/08 year we had reviewed a small number of tax credit complaints that HMRC had considered under the revised COP 26. The following three case summaries provide an indication of the type of decisions made under the revised code.

TC case summary 1

Mr and Mrs A were overpaid tax credits for the 2003/04 and 2004/05 tax years. The Tax Credit Office (TCO) used the information Mr and Mrs A provided on their claim form to calculate their entitlement to Working Tax Credit (WTC) and Child Tax Credit (CTC). In May 2003, the TCO sent the couple an award notice, asking them to notify the TCO if their household income rose above a certain amount. During the 2003/04 tax year, Mrs A's income increased significantly. The TCO had no record of Mr and Mrs A notifying them of the increase until they completed their annual declaration after the end of the 2003/04 tax year. By this stage, the TCO had started to make provisional payments

for the 2004/05 tax year which were also based on a household income which was too low. This overpayment was also caused, in part, because Mr and Mrs A delayed telling the TCO that their child had left full time education.

The TCO said that the overpayments arose because the Mr and Mrs A delayed in telling them about changes in their circumstances. The TCO had no records of any calls during the 2003/04 tax year. In their complaint to this office, the couple said that they had telephoned the Helpline to update their income.

We asked Mr and Mrs A to provide copies of their telephone bills which showed that they had telephoned the Helpline but they were unable to do so. We were unable to reach a conclusion that they had informed the TCO of their increase in income and did not think that the TCO were unreasonable in saying that the overpayments were not caused by a TCO mistake. The TCO considered the case under the revised COP 26. They considered that they had met

their responsibilities. They also considered that there was no evidence that Mr and Mrs A had met their responsibilities; they had failed to notify the TCO, within one month, of an increase in income and that their child had left full time education. The TCO concluded that Mr and Mrs A should repay the overpayments. We did not think that the TCO's decision was unreasonable and we did not ask them to write off the overpayment.



TC case summary 2

Mr B and Ms B claimed tax credits in the 2003/04 tax year. In June 2004, Ms B called the Helpline to notify the TCO that she was in receipt of Job Seekers Allowance (Contributions Based). The TCO made a mistake in updating her award and recorded that she was in receipt of Job Seekers Allowance (Income Based). When the system recalculated their award, it disregarded all other household income. Mr B started to receive WTC and the couple's award of CTC increased significantly. This led to an overpayment for the 2004/05 tax year.

Ms B disputed the overpayment. She said that she had called the Helpline many times to tell them that her award was incorrect and that they were being paid too much tax credit. The TCO considered the dispute and told Ms B that they had not made a mistake and that her award notice showed that her award was based on her receiving Job Seekers Allowance (Income Based), when this was incorrect.

We asked the TCO to reconsider the case under the revised COP 26. They concluded that Ms B had met her responsibility in notifying them that she was in receipt of Job Seekers Allowance (Contributions Based). The TCO failed to meet their responsibilities when they made a mistake in updating her records and recorded that she was in receipt of Job Seekers Allowance (Income Based). Ms B had

contacted the TCO when she realised that their award was not correct. The TCO remitted the overpayment and made payments to reflect the worry and distress their actions caused and their poor complaints handling. We decided that this decision was reasonable and discussed it with Ms B. She accepted it as a resolution to her complaint to this office.

TC case summary 3

Ms C and Mr D made their claim for tax credits via the Internet. At the time, Mr D was in receipt of Income Support and, for the purposes of calculating their entitlement to tax credits, the TCO disregarded all other household income.

Shortly after they made their claim, Mr D stopped receiving Income Support. This meant that all other household income had to be included for the purposes of calculating their entitlement to tax credits. Ms C rang the Helpline and told the advisor that Mr D no longer received Income Support. The advisor asked her about other sources of income but Ms C did not say that Mr D

was in receipt of Incapacity Benefit. This meant that the TCO calculated the award using a lower household income than they should have, which led to an overpayment of tax credits. Some time after the end of the tax year, it was confirmed that Mr D was in receipt of Incapacity Benefit.

The TCO considered the overpayment under COP 26. They said that there was no evidence that, when they claimed tax credits, Ms C and Mr D declared the Incapacity Benefit. They decided that the overpayment was not caused by their mistake and was recoverable.

In their complaint to this office, Ms C and Mr D maintained that, at the time they made the Internet claim, they declared all their income, including the Incapacity Benefit. Because the claim was made online, we were unable to obtain a copy of the claim form to determine whether they declared the Incapacity Benefit.

Following a detailed investigation of this complaint, which included a meeting with Ms C and Mr D, we asked the TCO to consider the case under the “exceptional circumstances” provisions of the revised COP 26. At the time that Ms C notified their change of circumstances, her child had been admitted to hospital under very difficult circumstances. The TCO noted

that Ms C had made an effort to notify the change of circumstances at what must have been a very traumatic time for her and she could not have reasonably been expected to be of a clear enough mind to report all relevant information, particularly as she believed that she had told the TCO that Mr D received Incapacity Benefit. As a result of this office raising this issue with the TCO, they decided that Ms C and Mr D should not have to repay the overpayment. We also asked them to apologise to Ms C and Mr D and pay their direct costs as well as £230 compensation for the mistakes made in handling the tax credit claim, their poor handling of the complaint and the delay in providing our office with a report.

The following three case summaries illustrate the type of issues that we have dealt with in other tax credit complaints, prior to the introduction of the revised COP 26.

TC case summary 4

Miss E disputed overpayments which arose in 2004/05 and 2005/06 because the TCO included a Jobseekers' Allowance (Income Based) marker for Miss E, when she was not receiving that benefit. When a claimant is on Jobseekers Allowance (Income Based) any other household income is disregarded when calculating the award. Therefore, the income details given by Miss E's partner were not taken into account, and this led to a small overpayment for 2004/05, and a large overpayment for 2005/06.

When Miss E disputed the overpayments, the TCO wrote to her explaining how they had arisen. Shortly afterwards, they wrote again to say that they were considering her dispute, and that they would suspend collection of the overpayment while they did this.

Three days later, the TCO sent Miss E and her partner an award notice for 2006/07, which showed that an adjustment had been made to her account, and no overpayment was outstanding. This was because the overpayment had been suspended.

When she received the award notice, Miss E telephoned the Helpline to query it, given that the adjustment seemed to have removed the overpayments.

Days later, the TCO wrote to Miss E and said they had decided the overpayment was recoverable because it was not reasonable for her to have considered the payments were correct, and they were recommending recovery. They removed the suspension and recovery of the overpayments recommenced.

Miss E complained through her MP, saying that she had been told, when she rang the

Helpline, that the overpayment had been written off.

On receiving the letter from Miss E's MP, the TCO considered matters again. When they wrote to the MP, they told him that they had listened to a number of telephone calls and they had been unable to find any evidence that Miss E had been misled. They intended to continue to recover the overpaid amounts.



We upheld Miss E's complaint. When we listened to the recording of the telephone call in question, it was clear that the advisor had told Miss E that the overpayment was not going to be recovered. The advisor told Miss E that she did not owe the TCO anything, and that her payments would continue at the rate they had been, before recovery of the overpaid amounts commenced.

When we contacted the TCO to explain our views about the telephone call, they listened to it again, and they agreed that Miss E had, clearly, been misadvised. They waived the overpaid amount for 2005/06, which led to tax credits already recovered from Miss E being returned to her.

There was some uncertainty about the amount of waiver, as the overpaid amount at the time that the misleading advice was given had been higher than the TCO subsequently waived (the award had been increased after the end of the year

to include a backdated disability element, which the TCO had used to reduce the overpayment). We were not able to resolve this issue through discussion with the TCO.

Accordingly, the Adjudicator considered the matter, and she recommended that the TCO should waive the amount that was outstanding at the time that the misleading advice was given, which also included the small overpaid amount for 2004/05, that the TCO had not previously written off.

In addition, the TCO agreed to make a payment of compensation to Miss E. Miss E had told the TCO, on a number of occasions, that recovery of the overpayment was causing her and her family hardship. Where this is the case, the TCO should ensure that the claimant's individual circumstances are considered, and the rate of recovery adjusted to avoid hardship where appropriate. This had not happened in Miss E's case.

TC case summary 5

Mr F is disabled, and had previously claimed Disabled Person's Tax Credit. Before new tax credits began in April 2003, he made a claim for Working Tax Credit, and received an entitlement including a disability element.

When Mr F renewed his claim, the advisor told him that he had not qualified to receive the disability element of WTC, as he was not

in receipt of any of the qualifying benefits. Therefore, all the payments he had received were classed as an overpayment, and his payments stopped.

When Mr F complained, the TCO confirmed that he had not met the criteria to be entitled to the disability element of tax credits.

We upheld Mr F's complaint. In 2003/04, receipt of Disabled Person's Tax Credit was, in itself, a qualifying benefit for the disability element of new tax credits. When we pointed this out to the TCO, they corrected

their records, to show that Mr F had not been overpaid at all. This also meant that he received tax credits which he had been entitled to in later years.

TC case summary 6

Mr G is registered disabled. His representative, a welfare rights worker, complained that Mr G's tax credit affairs had been mishandled by the TCO. They had removed the disability element of his tax credits incorrectly, and this resulted in his tax credit payments stopping and requests for him to repay overpayments amounting to almost £5,000.

Mr G suffered from a condition that was affected by stress. He maintained that the stress caused by the TCO's incorrect actions led to him taking sick absence from work. During this period he found it necessary to live

off his limited savings because he was no longer receiving tax credits and his income was reduced while he was off work sick.

Following a complaint to the TCO, they rectified the position approximately one year later, restoring Mr G's tax credit entitlement, cancelling the overpayments and paying him his arrears. However, the TCO rejected Mr G's request that he be compensated for his financial loss. Instead, they paid him £150 compensation for worry and distress, £50 on account of delay and £10 to cover direct costs.

We considered this complaint at length and concluded that Mr G had suffered a loss as a direct result of the TCO's mishandling of his tax credit affairs and that, in accordance with HMRC's complaints guidance, the TCO should be asked to compensate this loss.

We noted that the TCO had asked for evidence of Mr G's financial loss, but that they had rejected his claim on the basis that he had had a period of sick absence prior to the one that had been brought about by the TCO's mishandling of his affairs. From the papers supplied, we noted that the prior period of sick absence related to a dental operation and unrelated to Mr J's stress related illness.

We obtained from the TCO an agreement, in principle, to compensate Mr G for his financial loss and, after his welfare worker provided further information, the TCO agreed to pay Mr G £423 to cover his lost income and interest. We also asked them to pay a further £300 compensation, in addition to the £210 they had already offered.

The TCO agreed to pay this compensation and, when we put their offer to Mr G's welfare worker, he accepted it as a resolution to the complaint.

Other HM Revenue & Customs case summaries

ESC A19 case summary

Mrs H complained about HMRC's refusal to waive underpayments of tax which arose in the tax years 1999/00 to 2004/05.

Mrs H received a state pension in the year 1999/00 but continued to work until she retired in 2004/05. She also received an overseas pension which was liable to UK tax. HMRC had presumed that Mrs H had retired at age 60 and opened a PAYE record to administer her UK pension income. At around the same time her employer changed the way her payroll was administered. HMRC were not notified of these changes and were therefore unaware that she continued to be in work.

In 2004/05, Mrs H was prompted by her employer to discuss her tax affairs with HMRC. This was because it became apparent that she received personal allowances which were already allocated against her state pension. As a consequence, she was asked to complete a self assessment return for that year. It was found that she had underpaid tax for that year, in part because of the duplicate personal allowances, and because, in their view, she was liable to pay tax on her foreign pension.

Mrs H asked for her tax affairs to be reviewed, as she believed that she had supplied all the necessary information that would have allowed HMRC to calculate the correct amount of tax due. In particular, she had notified HMRC that she was in receipt of a foreign pension in the tax years 1999/00 and 2000/01. Also, she did not receive any coding notices in respect of her employment for the year 2001/02 onwards. As her circumstances did not change, she said that she had no reason to suspect her tax affairs were not in order. HMRC said they were unable to verify that Mrs H had notified them about the overseas pension because they had deleted her earlier tax records under their retention and disposal policy. They found that she had underpaid tax for the year 1999/00 because, in their view, her overseas pension was not assessed for tax. She had underpaid tax for the years 2000/01 to 2003/04 for the same reason, and because she received duplicate personal allowances. HMRC decided that ESC A19 did not apply because it was not reasonable for Mrs H to believe that her tax affairs were in order.

Prompted by our investigation into her complaint, Mrs H provided us with her Coding Notices for the years 1998/99 to 1999/00. After careful examination of these Notices, we found that HMRC had, in fact, restricted her personal allowances to take into account her foreign pension. This indicated that she did notify HMRC about this source of income. As her circumstances in respect of her employment had not changed, and in the absence of any Coding Notices we accepted Mrs H's view that there was nothing to lead her to believe that HMRC had not accounted for this income. We asked HMRC to reconsider their

decision regarding arrears in respect of this source of income, for the years 1999/00 to 2003/04. Taking into account the new evidence that Mrs H had provided, HMRC agreed with our view and decided to give up the tax underpaid in relation to the foreign pension.

We did not consider that "reasonable belief" should apply in respect of her other arrears, as she would have received sufficient information, through Coding Notices, payslips and P60s that could have allowed her to conclude that she had received her personal allowances twice.

Stamp Office case summary

J Solicitors complained to us about an interest charge of £73,500 that had been imposed on their client company, because Stamp Duty Land Tax (SDLT) amounting to £1,193,000 had been paid late.

J Solicitors advised that the company's payment of SDLT, which had been funded by a third party (K Ltd) had been sent, along with their SDLT 1 return, to the Stamp Office's (the SO's) Rapid Data Capture centre in Netherton on 30 January 2006.

The SO said that they had no trace of receiving the payment.

J Solicitors said that K Ltd had become aware that their payment had not cleared their bank account in April 2006. J Solicitors contacted the SO on 5 May 2006 when they were asked to supply details of the missing payment so that the SO could try to trace it. These details were not supplied.

It was not until November 2006 that K Ltd contacted the SO again, to establish whether, given that an SDLT 5 Land Transaction Certificate had been issued without payment, a payment was still required.

The issue of an SDLT 5 is not dependent upon the payment of the SDLT due, so the SO asked K Ltd to provide a replacement cheque.

The SO received the client company's SDLT payment on 25 January 2007 and, because this tax had been due on 8 February 2006, interest accrued from that date until the date of payment.



When we reviewed the complaint, we noted that the SO had failed to issue SDLT 12 reminders for the outstanding duty and accruing interest until January and February 2007, and we considered that, had these reminders been issued at the appropriate time, soon after the due date, J Solicitors would most likely have arranged for a replacement payment of their client's SDLT to be sent to the SO sooner.

In the circumstances, we asked the SO to submit their papers to HMRC's Interest Review Unit (IRU) to seek their view on whether any part of the interest should be given up.

The IRU agreed with us that the interest which arose from the due date to the date on which K Ltd became aware that their payment had not cleared should be given up. This amounted to £16,000.

We agreed that, in the absence of any evidence to show that the original payment had been sent to and received by the SO, there were no grounds upon which the balance of the interest charge could be given up.

Value Added Tax case summary 1

When M Ltd registered for VAT, the services they provided were standard rated, but shortly afterwards the VAT liability changed to exempt. M Ltd were unaware of the change and continued to account for VAT on their services.

Two years after the VAT liability change, an assurance officer visited the company, and noted that the company charged VAT, but he did not question this, and so failed to point out the error. As a result the company continued to overpay VAT for several years longer.

When the company finally discovered their mistake, they applied to HMRC for a refund of the VAT they had overcharged, citing the visiting officer's mistake in failing to point out the true VAT liability. HMRC agreed to refund the VAT overpaid in the most recent three years, adjudging that this would not unjustly enrich the company, but they said that any

earlier overpayments could not be refunded because of the three year cap (a legislative measure that prevents VAT under or overpaid more than three years earlier being collected or repaid). M Ltd argued that the cap should be overridden because of the officer's mistake.

HMRC acknowledged the officer's mistake, but refused to compensate M Ltd. They could not override the three year cap but, on an ex gratia basis, they could compensate a business if it could be shown that they had suffered losses solely as a result of their mistake. They said that the company had passed on the burden of the VAT to their customers in the fees charged, and so had not suffered any loss as a result of overcharging VAT. M Ltd brought their complaint to us.

Our remit in looking at M Ltd's complaint was supervisory only. When HMRC refused to compensate the company they had been exercising a discretion. Our role was to ensure that they had taken account of all the relevant factors in reaching their decision, and that they had acted in accordance with their internal guidance, but we could not substitute our judgement for theirs unless we found their decision unreasonable.

In this case, we thought the most direct approach would be to start with a view that the company had suffered losses as a result of HMRC's mistake, and then see whether HMRC's arguments and analysis of M Ltd's

evidence of loss gave us reason to doubt this. The Adjudicator looked at the evidence and HMRC's assessment of it, and decided that there were grounds for doubt.

In HMRC's analysis, the company's profitability was governed by factors other than the VAT charge and there were separate commercial considerations in play too. They found the company's evidence that their losses were caused only by the VAT charge to be flawed.

Accordingly, she did not find HMRC's decision unreasonable, and did not uphold the complaint.

Value Added Tax case summary 2

This is the first complaint that we have seen about delays caused by the checks that HMRC are now making to counter Missing Trader Intra-Community (MTIC) fraud, before registering a business for VAT, or before making a repayment that a VAT registered trader has claimed. This type of VAT fraud involves obtaining a VAT registration number in the UK for the purpose of purchasing goods free from VAT in another EU Member State, selling them at a VAT inclusive price in the UK and then going missing or defaulting without paying the output tax due to HMRC.

When O Ltd applied to register for VAT, their application was put through HMRC's pre-registration checks. The checks took over seven months to complete, after which time the company was registered for VAT. While the checks were still being made, the company's director complained, first to HMRC, and then to us, about the delay in registration, and the commercial and financial difficulty that this was causing.

Early in our investigation, we established HMRC's policies governing their checks. They told us that they considered the checks so important in the fight against MTIC fraud that they must take as long as was necessary; there was no point in time beyond which delay due to the checks became unreasonable. They would only consider accidental delays as unreasonable, and as amounting to mistakes under their Code of Practice on complaints. HMRC also told us that they would not investigate complaints of delay during the currency of their checks; they would only do so after registration had been granted or refused. The business would have to make a fresh complaint if they still wished to complain at that time.

HMRC's policies are outside our remit to consider. Accordingly, we can only consider a complaint after VAT registration has been granted or refused, and after HMRC's complaint process has been exhausted.

We were concerned to see, when we began to investigate this complaint and others, that complaints units were not all treating correspondence that they received in the same way. It was clear that many of the enquiries that were being received were not complaints as such, but rather enquiries about progress, and many that were clearly

complaints, were complaints about the length of the check process rather than about accidental delay, only the latter coming within the remit of the Code of Practice.

Some complaints units took all enquiries about delays as requests for information, and held them outside the complaints system, and others took similar enquiries through the two tier complaints system. We were concerned that there should be uniformity of treatment, and that enquirers and complainants should be clear about where they stand.

On investigation, we found that there had been two separate periods of accidental delay amounting to nearly ten weeks in total. We recommended that HMRC compensate the company for any commercial losses or additional expenses that it could show it had incurred as a direct result of HMRC's unreasonable delays, and that they make a payment of £100 to the company's director in recognition of the worry and distress their mistakes had caused.

Since this case was resolved, HMRC have told us that MTIC processes and procedures have been significantly improved, some of them as a direct result of this complaint.

Detection case summary

Mrs P was stopped at a UK airport following an inward flight from abroad. She was subjected to a full examination which included

a full strip search. Mrs P complained to us about a number of issues surrounding the whole process.

Whilst we could see that HMRC had wide ranging powers, we were concerned that the record keeping by the officers meant we were unable to get a clear picture of the circumstances, particularly as regards the reason for the search of person recorded in the officers' notebooks. We found that there were several inconsistencies within the notebooks, including one that was not completed until several days after the events.

Mrs P had complained that the grounds for suspicion were never fully explained, and that she had clearly been given the impression that a swab test had, erroneously as it later was found, suggested that she had been in contact with controlled drugs. However, when we analysed the notebooks we became concerned that the officers had inconsistent views of what the grounds for searching Mrs P were. That being so, we could not be certain what grounds would have been given to Mrs P to inform her decision whether or not to appeal.

HMRC told us that the officers were in a dynamic situation which could potentially

lead to a serious arrestable offence. We considered that the apparent confusion Mrs P had found could have been resolved by all the officers involved simply taking a moment's reflection before the search was conducted. During the course of our investigation, we became aware that HMRC themselves had some concern about their guidance to officers, and that there was a danger that, if read literally, it could fetter an officer's discretion in situations where that was not warranted. We recognised that HMRC were in the process of reviewing the guidance and we invited them to let us have sight of any revisions as they developed.

Mrs P was ultimately found not to be carrying anything of HMRC interest. This case demonstrated that HMRC officers must be mindful that, despite their sophisticated profiling methods, many of those they stop will be totally innocent of any offence, and that they should pay particular attention to the records that they keep of each search, and the grounds that they relied upon for any action that they took.

Tax case summary 1

Mr Q complained, through his accountants, about the way HMRC handled an enquiry into his 2002/03 self assessment tax return.

HMRC were conducting an aspect enquiry into the 2001/02 tax return (about which no complaint was made) when a further enquiry was opened into Mr Q's 2002/03 return. The enquiry was opened because the Inspector examined third party information provided by a bank, and concluded that Mr Q had an account with them, for which interest earned had not been declared in the return.

Financial institutions have to provide information to HMRC each year showing interest that has been paid. At the time, they did this in two ways. Firstly, they provided a return under Section 17 of the Taxes Management Act 1970, in relation to interest earned on bank or building society accounts. Secondly, they provided a return under Section 18 of the same legislation, for any other investment interest.

In the opening letter to Mr Q, HMRC said they had information that he had a bank account and interest of over £1,000 before tax was paid, which was not included in a schedule attached to his tax return. The Inspector asked for confirmation that the amount was omitted from the return.

Mr Q's accountant subsequently contacted the Inspector to say they could find no trace of the account in question, and asked for the sort code: information the Inspector was unable to provide.

There is no doubt that HMRC thereafter followed the correct procedure – they referred the issue to their Centre for Revenue Intelligence to check the details with the bank. The bank replied, confirming the details they had provided were correct, but they were not able to provide a branch and sort code as the information had been supplied under Section 18, not Section 17.

Eventually, things were clarified and it was established that the interest in question was from Treasury stock, which had been included in Mr Q's return all along.

However, Mr Q had incurred substantial professional fees, and his accountants later contended that these should be reimbursed. Initially, HMRC were prepared to concede that the enquiry could have been closed earlier, and they asked the agent for a breakdown of the costs.

The matter was then referred to the Local Compliance Complaints team, in view of the level of costs involved. The second tier review concluded that there had been no mistake, and none of the costs would be reimbursed.

The Adjudicator upheld this complaint, as she considered that most of the costs should be reimbursed. This is because she felt that the third party information had been misinterpreted all along. The information about the interest came from a Section 18 return, which meant that it was not bank or building society interest. The Adjudicator considered that the enquiry was progressed in such a way that it was clear the Inspector thought the interest in question was from

a bank account, and that this made it very difficult for Mr Q and his accountants to provide the relevant information to close the enquiry quickly.

It also seemed that the "penny should have dropped" on two distinct occasions, firstly when the accountant asked for a sort code, and secondly when the bank said that they did not provide sort codes or branch details in relation to Section 18 returns of interest.

The invoice provided by the accountants for professional fees incurred included costs for both enquiries. In upholding the complaint, the Adjudicator explained that it seemed to

her it would be reasonable for HMRC to ask for a further breakdown of the actual costs that could have been avoided, were it not for HMRC's shortcomings.

Tax case summary 2

Mr and Mrs R were involved in a partnership, which was set up before 6 April 1994. In 1998, HMRC (then the Inland Revenue) made enquiries into some of their partnership returns for a number of preceding years and, as a result, more tax became due. The Inland Revenue issued revised assessments for the years in question on 2 July 1999, showing that interest would run from 1 August 1999 on each of them.

Subsequently, the Inland Revenue considered that the assessments were misleading on this aspect because, in their view, Section 86 of the Taxes Management Act 1970 (as amended by Section 110 of the Finance Act 1995, and Section 131 of the Finance Act 1996) meant that interest should have applied from 31 January after each year in question. They amended their records accordingly.

Subsequently, Mr and Mrs R made arrangements to pay the tax that was due, but they objected to the imposition of the further interest. Their agent considered that

the interest should have been charged in accordance with the original assessments. He also pointed out that, because his clients were in partnership before 6 April 1994, the amended (new) Section 86 did not apply in his clients' case. HMRC disagreed with this interpretation of the legislation, and refused to waive any of the interest.



We upheld Mr and Mrs R's complaint. We considered that HMRC had not interpreted the legislation correctly. Section 110(4) of the Finance Act 1995 (as added by Section 131 of the Finance Act 1996 and deemed always to have been in effect) expressly excluded those in partnership before 6 April 1994 from the new Section 86 provisions, until 1997/1998. Therefore, in our view, HMRC had not established any legal basis for asking Mr and Mrs R to pay interest before 1 August 1999.

We pointed this out to HMRC, and they took specialist advice, after which they were

able to agree that they had interpreted the legislation incorrectly. They removed the interest charges which they had applied before 1 August 1999, which amounted to several thousand pounds. HMRC also agreed to make payments of £200 for the worry and distress caused, and £200 for poor complaint handling.

Although the Adjudicator's Office does not normally consider legal issues as such, it seemed that, on this occasion, HMRC had taken a wholly unreasonable view of the law, such that we were bound to intercede.

The Valuation Office Agency

VOA case summary

For the purposes of making a rating assessment, the VOA conducted an inspection of the premises of company S without making a prior appointment. Mr T, the owner of company S, complained that this contravened the VOA's Non Domestic Charter which stated, "if we need to visit your property we will give you seven days' notice wherever possible", and that it contradicted the guidance contained within the Agency's internal Rating Manual, which encouraged "cold calling" in some circumstances.

The VOA did not agree that there was a contradiction and said that, as the Charter used the phrase "wherever possible", it was compatible with the Rating Manual. Mr T maintained that these words implied that inspections would be made without an appointment only on very rare occasions. He asked us to investigate.

After considering the facts of the case, we agreed with Mr T that the Charter gave the impression that "cold calling" would only occur in exceptional circumstances, and that this was not in accordance with the guidance in the Rating Manual.

We discussed our views with the VOA, who reconsidered the matter and agreed that the Charter was not worded well and could mislead customers. Where the VOA has given misleading advice they can reimburse

the customer's costs and make payments for worry and distress, in line with their leaflet "Putting things right for you". In this case no costs had been incurred, and we considered that an apology was the appropriate redress. The VOA apologised to Mr T for any difficulties that might have arisen in connection with the issue, and have also confirmed that they are currently considering revisions to the wording of the Charter to make it more compatible with the Rating Manual.

Office of the Public Guardian

Note: The following case summary relates to the PGO. We did not receive any complaints about the OPG during 2007/08.

PGO case summary

Mr U applied to the PGO to register an Enduring Power of Attorney (EPA) for his mother, as he believed that she was losing mental capacity. He was required to advise her and four other relatives of the application. More than one relative sent objections to the PGO but they failed to inform Mr U of all of them.

One of the objections included a request from Mr U's mother for the EPA to be a joint one with Mr U and another relative. As this implied that she was revoking her agreement to Mr U's application, the PGO referred the matter to the Court of Protection, which asked for a formal Deed of Revocation, evidence of Mrs U's mental health and, if possible, a new EPA.

It was only when Mr U was sent a copy of the new joint EPA for his comments that he

became aware of this and the other objections that had been made to his own application. Following a series of exchanges, with each side producing legal and medical opinion and correspondence supporting its case, the Court accepted the Deed of Revocation. But after Mr U had obtained new medical evidence the Court reconsidered the case and decided to register his original application. This was seven months after he had made it.

Mr U complained that the PGO should have accepted his application at the outset, and that by not doing so they had put him to unnecessary trouble and expense and had not acted with due care and attention to protect the financial and emotional interests of his mother. He also complained that they had dealt with his subsequent complaints poorly and that the £100 they had paid him in compensation was inadequate.

We did not find that the PGO had failed to protect the interests of Mrs U's mother. Their role was an administrative one. Legal matters are for the Court of Protection to deal with, and in this case there was uncertainty as to Mrs U's mental capacity and her choice of attorney, as well as family objections to Mr U's application. We found that the PGO had acted correctly in putting all these matters before the Court to investigate and decide upon.

We did find that the PGO had handled Mr U's application poorly but we considered that the payment of £100 already made for

the worry and distress this had caused him was reasonable redress.

We found that the PGO had not addressed Mr U's complaint that he had incurred unnecessary expense. We felt that it was probable that, if he had been informed of all the objections to his application at the time they were received, the matter would have been resolved sooner and at a lower cost. We therefore asked the PGO to consider this and they agreed to pay him £500 to reimburse his additional direct costs and £50 to acknowledge their poor complaints handling.

Note: We do not have a case summary relating to The Insolvency Service this year.

Appendix 7 – Staff chart as at 31 March 2008



Appendix 8 – Contact details

The Adjudicator's Office
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Telephone: **0300 057 1111** or **020 7667 1832**
(Typetalk facilities are available)

Fax: **0300 057 1212** or **020 7667 1830**

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

You can contact us between 9am and 5pm,
Monday to Friday (apart from Bank Holidays).

Calls to our 0300 number will cost the same
or less than 01 and 02 prefixed numbers.

Appendix 9 – Publications

Leaflets



AO1 – The Adjudicator's Office for complaints about HM Revenue & Customs and the Valuation Office Agency



AO5 – The Adjudicator's Office for complaints about the Office of the Public Guardian



AO6 – The Adjudicator's Office for complaints about The Insolvency Service

Annual Reports



Annual Report 2006/07



Annual Report 2005/06



	T H E
	A D J U D I C A T O R ' S
	O F F I C E

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